

NOTICE
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2019 IL App (5th) 170485-U

NO. 5-17-0485

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
CHRISTINE M. RASMUSSEN,)	Madison County.
)	
Petitioner-Appellee,)	
)	
and)	No. 15-D-778
)	
MICHAEL A. RASMUSSEN,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant.)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court. Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not err by not finding that petitioner decreased the value of respondent’s nonmarital home by failing to make mortgage payments during divorce proceedings; correctly calculated respondent’s marital contributions to Thrift Savings Plan; did not err by assigning petitioner as trustee of 503(g) trust (see 750 ILCS 5/503(g) (West 2016)); and did not fund the trust with a confiscatory amount of respondent’s nonmarital property. Judgment modified to amend trust termination date and to order return of any leftover trust funds to respondent.

¶ 2 The respondent, Michael A. Rasmussen (Michael), appeals the July 12, 2017, judgment of the circuit court of Madison County. He contends that the circuit court erred by not finding that the petitioner, Christine M. Rasmussen (Christie), decreased the value

of his nonmarital home by failing to make mortgage payments after his incarceration and that the circuit court did not consider this decreased value in its division of the marital property. He further contends that the circuit court erred by assigning Christie—an interested party—as trustee over a 503(g) trust (see 750 ILCS 5/503(g) (West 2016)); by not directing the return of undisbursed funds of the trust to him; and by funding the trust with a confiscatory portion of his nonmarital property. Finally, he contends that the circuit court erred by miscalculating the value of the marital portion of his Thrift Savings Plan. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The parties were married on May 29, 2010. Michael adopted two of Christie’s biological children—twin girls—during the marriage. On August 13, 2015, Christie filed a petition for dissolution of the marriage and a petition for temporary relief in which she requested, *inter alia*, that while the divorce proceedings were pending, she and the children be awarded the sole occupancy, use, and possession of Michael’s nonmarital home in which the family resided. On August 13, 2015, Christie also filed a petition to establish a 503(g) trust (see *id.*), alleging that Michael was currently confined to the Madison County jail and charged with multiple felony counts of abuse against the parties’ children.¹ The petition further alleged that Michael possessed assets in a Thrift Savings Plan (TSP) and it was anticipated that he would be incarcerated for an extended period of time and unable to pay child support. Accordingly, the petition requested the

¹Christie testified at the hearing that Michael was eventually found guilty of abusing not only the twins whom Michael adopted, but also Christie’s daughter whom he had not adopted.

circuit court to transfer Michael's portion of the TSP into a 503(g) trust for the benefit of the children.² See *id.* On August 13, 2015, Christie also filed a motion for a temporary restraining order (TRO) in which she referenced the TSP and requested that the circuit court prohibit Michael from negotiating, selling, exchanging, liquidating, transferring, or otherwise disposing of any assets therein.

¶ 5 On October 30, 2015, Michael filed a motion to release funds, requesting the circuit court to authorize the liquidation of his nonmarital portion of the TSP, to direct \$12,000 of the proceeds of the same to be paid to his attorney, and to order the balance to be held in a restricted account until further order of the court. On November 10, 2015, the circuit court entered an order indicating that, by stipulation of the parties, Michael's TSP account with an approximate balance of \$27,519 was to be liquidated, with \$12,000 of the proceeds to be applied to Michael's attorney fees and the remaining balance to be paid to Christie for Michael's temporary child support obligation. The circuit court granted Christie's motion for a TRO on a temporary basis, freezing any future funds in Michael's TSP account as well as any other accounts or assets of Michael's. Hearing on the petition to establish a 503(g) trust was reserved.

¶ 6 On March 7, 2017, the circuit court entered an order dissolving the marriage. On the same date, the circuit court entered a temporary order, indicating the parties had

²Christie filed a subsequent petition to establish a 503(g) trust on December 23, 2016, requesting the same relief, but indicating that Michael was found guilty on multiple felony counts and incarcerated on a 30-year sentence.

stipulated that \$50,000 would be released from the TSP³ to Christie and construed as a partial award of the overall equitable distribution of marital property. The remaining funds in the TSP were continued to be restricted pursuant to the TRO.

¶ 7 A hearing on all remaining issues was conducted on July 12, 2017, where the following testimony and evidence was adduced. At the outset of the hearing, the circuit court took judicial notice that on November 21, 2016, Michael pleaded guilty to predatory criminal sexual assault of a child and aggravated criminal sexual abuse and received consecutive sentences for the same.

¶ 8 Christie testified that the parties were married on May 29, 2010, that she had three daughters from a prior marriage, and during the course of the parties' marriage, Michael adopted the twins. On June 21, 2015, Christie discovered that Michael had sexually abused all three of her daughters. She confirmed that in August 2015 she filed the petition for dissolution of the marriage, the petition to establish a 503(g) trust, and the petition for temporary relief. Michael was in custody by the time these petitions were filed. Christie testified that she had received no regular child support payments from Michael to that point, nor any contribution toward the children's health care, education, or extracurricular expenses. She confirmed, however, the receipt of approximately \$17,000 from the TSP, pursuant to the November 10, 2015, agreed order. Besides the

³The record reflects that the account number of the TSP from which this \$50,000 was awarded was the same account number referenced in the November 10, 2015, order which set forth a balance of \$27,519 at that time.

\$17,000, the only funds Christie received were half of the proceeds from the sale of Michael's vehicle.

¶ 9 Christie testified that Michael was employed by the Air National Guard prior to his incarceration and that a W2 indicated that Michael had earned \$86,883 in 2014. Christie requested the following funds to be placed in the 503(g) trust for 58 months—the amount of time from the date the petition for dissolution was filed until the twins would be emancipated upon high school graduation in 2020: (1) \$1660 per month, or the statutory amount of 28% percent of Michael's net, preincarceration earnings—which is the amount set forth in the statute that was effective at the time Christie filed the petition for dissolution—for a total of \$96,280; (2) \$650 per month for health insurance and noncovered health expenses, an amount equal to prior amounts Christie paid out-of-pocket for the same for a total of \$37,700; (3) \$250 per month for educational-related expenses for a total of \$14,500; and (4) \$200 per month⁴ for extracurricular expenses for a total of \$11,600.

¶ 10 In addition to the above requested amounts for the 58-month time span, Christie testified that she and her three daughters were all participating in counseling and therapy sessions as a result of the abuse. Accordingly, she requested the 503(g) trust to be funded to compensate for the \$3600 spent in therapy to date and for consideration to be given regarding the cost of future therapy expenses as well, which Christie anticipated to continue for “probably the rest of our lives.” Christie further requested that Michael be

⁴The transcript of the hearing reflects this request to be \$2000 per month for these expenses, an obvious scrivener's error, as Christie's position statement requests \$200 per month for the same.

responsible for half of the amount of tuition, housing, and meal expenses for four years at SIU Edwardsville for the twins after they graduated from high school, an amount totaling \$83,896 pursuant to Christie's position statement. Christie was unsure of how the trust would affect the ability to obtain financial aid for college. Based on her testimony regarding the needs of the twins, Christie confirmed that the total amount she requested to fund the trust was \$247,576.

¶ 11 Christie affirmed that the balance of the TSP as of December 31, 2016, was \$339,327. She noted that during the marriage, Michael "always put more into his [TSP] than the minimum" and discovery revealed that amount was approximately \$28,000 per year. Michael did not object to this testimony. Christie's position statement indicates that Michael contributed precisely \$28,500 per year to the TSP during the marriage. Accordingly, Christie requested the circuit court to award her half of the amount of this annual figure as her marital portion of the TSP. Besides the TSP, Christie added that Michael had an active duty military retirement account and owned a house in Belleville which is valued at \$80,000.

¶ 12 Christie reported that she lost her van to repossession during the pendency of the divorce proceedings. Moreover, in reference to the \$50,000 that was awarded to her pursuant to the March 7, 2017, order as a partial award of marital property, Christie explained that the funds were intended to save the home⁵ where she and the twins currently reside, but she was unable to obtain the release of the \$50,000 and a foreclosure

⁵Michael quitclaimed his interest in the nonmarital home to Christie on March 7, 2017.

was filed against the home, with a move-out date scheduled for the end of the month. Christie testified that when she discovered the sexual abuse in June 2015, Michael owned the home where the family resided; she was concerned about paying for a house that she did not own; and the warranty deed was not recorded in her name until March 8, 2017, three or four months after foreclosure proceedings had commenced. Christie reiterated that, had she been able to secure the \$50,000 distribution, she could have redeemed the house from foreclosure.

¶ 13 Christie added that she resigned her position of employment to cash out one of her retirement accounts so she could have money to purchase a home. She specified on cross-examination that the retirement plan she cashed out was through the State University Retirement System (SURS) in the amount of \$68,000—after penalty—but the funds had not yet been disbursed to her. When asked if she had permission to cash out the retirement account in the midst of the divorce proceedings, Christie responded, “I never was told.” Christie testified that she had contributed to the SURS account for 13 years before the parties married in 2010 and had made contributions during the marriage until she cashed it out on April 13, 2017. Her plans were to rent a home initially, then use the money from the SURS account to buy a home. She indicated that she has a remaining retirement account which she referred to as a “three year IMRF” that she requested the circuit court to award to her.

¶ 14 Christie testified that she used proceeds she received from the sale of Michael’s vehicle to pay the \$3000 retainer for her attorney; however, the retainer had been exhausted and she owed her attorney an outstanding balance of \$1430. She requested

reimbursement of the full amount of attorney fees she had incurred. Christie testified that she was employed by the St. Clair County Transit District as a police officer on its train and as a St. Clair County 9-1-1 dispatcher. She indicated, over objection, that because she was a police officer and Michael was a convicted pedophile to whom she was married, she had been unable to pass the background checks needed for three prospective employment positions.

¶ 15 Christie testified on cross-examination that when Michael was first incarcerated, she was employed full-time, and the mortgage payments on the marital home—\$1025 per month—were current. She testified that her gross monthly income was \$3757.42 when she was employed full-time. She affirmed that she paid the mortgage the first month Michael was incarcerated, but stopped paying by the second month because the home had not yet been transferred to her. She testified that her boyfriend stayed with her in the home on his days off, but he made no mortgage payments nor paid any rent.

¶ 16 Christie conceded that she worked full-time until April 13, 2017, and—although she received \$17,000 pursuant to the November 10, 2015, agreed order; \$9000 from the sale of Michael’s vehicle; and an insurance check for \$4000 for damage to the house—she chose not to make any mortgage payments because “it wasn’t my home.” She noted that the insurance proceeds of \$4000 were applied toward the purchase of a new roof on the home in October 2015, which she was required to pay money out-of-pocket to complete. She further testified that she sold a boat for \$3000—the amount owed on it—and used the proceeds to pay off the outstanding loan.

¶ 17 Christie reasoned that she lived in the house without paying the mortgage because “I’m not going to pay for a home that I’m not going to get in the divorce” and it was two years later that Michael quitclaimed the home to her. Although she opted to forego making mortgage payments, Christie insisted that the reason the house was lost was because she did not receive the \$50,000 disbursement. She explained that although she had a full-time job, “I wasn’t working full[-]time” and “[t]here were months without paychecks.” Christie admitted that she did not care if Michael lost the house and she knew that foreclosure would occur at some point. She testified that there was approximately \$30,000 in equity on the house when Michael made the last mortgage payment. She disagreed that the equity was lost as a result of her refusal to pay the mortgage.

¶ 18 Christie denied living free for two years “because to maintain the children, everything else that all came out of my pocket where Michael and I used to split that.” She admitted on cross-examination that her earnings exceeded Michael’s, due to his incarceration. She further admitted that the money she requested Michael to pay exceeded the children’s actual expenses. On redirect, however, she testified that the children’s expenses on her affidavit did not include housing, transportation expenses, electricity, home insurance, and other costs to maintain a home. She confirmed pursuant to her affidavit that her household expenses exceeded her income by \$3200 per month and agreed that both parties should contribute to the twin’s expenses. She admitted on cross-examination that her financial affidavit included costs for housing, which should be reduced to zero, given that she was not making mortgage payments.

¶ 19 Christie affirmed on redirect that the amount she requested for the support of the twins was from the date the petition for dissolution was filed until the twins would graduate from high school. Moreover, the amount requested for college expenses was based on current tuition amounts at SIU Edwardsville, with no account for any possible increases in tuition before the twins would begin attending college. Christie deemed it appropriate for any excess funds in the 503(g) trust to be returned to Michael if the twins did not attend college or did not owe the full amounts earmarked for college expenses.

¶ 20 Michael took the stand and corroborated Christie's testimony that the mortgage on the marital home was current when he was taken into custody, the house was in his name only because he had acquired it before the marriage, and there was \$30,000 in equity in the home. Michael testified that he quitclaimed the house to Christie because he "wanted the girls to have someplace to live." At the time, Michael was aware that Christie had received proceeds from the sale of the boat and from the sale of his vehicle, which he did not dispute. Michael was not aware that Christie had cashed out her \$68,000 SURS account, nor was he aware that she was not paying the mortgage until after the home was already in foreclosure.

¶ 21 Michael testified that he became aware of Christie receiving insurance proceeds for claims on the home which he believed to be in the amount of \$22,000, not \$4000. However, he admitted that he had no proof of the amount she actually received. Michael testified that, besides the home that was in foreclosure, he owned a rental home prior to the marriage and, because of the home in foreclosure, the insurance policy on the rental home was cancelled due to "egregious circumstances." He reported that he was required

to pay \$3000 per year for insurance because of the foreclosure of the home and because of the insurance claims against it. Regarding the unpaid mortgage, Michael admitted that “it was my fault that it didn’t get paid. I got arrested.” However, he did not believe that Christie should have lived rent-free.

¶ 22 Michael testified that while incarcerated he receives “state pay of \$10 a month.” While in the Madison County jail he received \$9000 for the sale of his vehicle, as well as the \$12,000 from the TSP account that he used to pay his attorney. He agreed that he has no financial ability to pay child support because he is unable to be employed due to his incarceration. Regarding his retirement accounts, Michael indicated that he was divorced once before in 1999 and, by prior court order, his ex-wife received half of his military retirement and half of his civilian retirement. Accordingly, Michael testified that the remainder of his retirement “wouldn’t be much at all” for him to live on when he is released from prison. He estimated that the remaining half of his retirement would total \$700 per month.

¶ 23 Michael testified that his anticipated release from prison is 2030, at which time he will be 67 years old. He agreed that because he will be past retirement age and not employable as he was before, his TSP and social security are all he would have to live on. He requested his share of Christie’s retirement if she gets a share of his. Michael testified that the current balance of his TSP is \$339,000. He stated that he is aware that the twins are planning to attend college, which he is in favor of. He opined that \$100,000 would be a fair amount of money to set into the 503(g) trust for that purpose. He agreed that he has a responsibility to support the twins and he is not trying to avoid that responsibility.

¶ 24 On July 12, 2017, the circuit court entered a judgment of dissolution of marriage, in which it found, *inter alia*, that Michael contributed \$28,500 per year to the TSP during the 5½-year marriage, for a total amount of \$156,750. Christie was awarded \$78,375, representing 50% of that amount. The circuit court further established a 503(g) trust for the children and ordered it to be funded by transferring \$247,576 into the trust from the TSP. Michael filed a timely notice of appeal.

¶ 25 ANALYSIS

¶ 26 Michael raises the following three issues on appeal, which we restate as follows: (1) whether Christie’s refusal to pay the mortgage after Michael’s incarceration decreased the value of Michael’s nonmarital home, which the circuit court should have considered in its division of the marital property; (2) whether the circuit court erred by assigning Christie as an interested party to be the trustee of the 503(g) trust, by failing to order the return of any unused funds of the trust to Michael, and by funding the trust with a confiscatory portion of Michael’s nonmarital property; and (3) whether the circuit court erred in its calculation of the marital portion of the TSP.

¶ 27 I. Property Division

¶ 28 The first issue is whether Christie’s refusal to pay the mortgage after Michael was incarcerated reduced the value of Michael’s nonmarital property, which the circuit court should have considered in its division of the marital property. At the outset, we note that Michael has waived this issue by failing to specifically raise it in his posttrial motion. His posttrial motion generally alleged that the circuit court “used a devastatingly one-sided allocation of property” but made no mention of Christie’s failure to pay the

mortgage and the effect of such failure on the value of Michael’s nonmarital home. See *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1023 (2006) (issues not raised with specificity in posttrial motion are waived and may not be raised for the first time on appeal). However, “[t]he rule of waiver is a limitation on parties and not on courts.” *In re Marriage of Sutton*, 136 Ill. 2d 441, 446 (1990). Accordingly, waiver notwithstanding, we opt to address Michael’s issue.

¶ 29 “The trial court’s allocation of property is subject to an abuse of discretion standard of review.” *In re Marriage of Berberet*, 2012 IL App 4th 110749, ¶ 46. “An abuse of discretion occurs only where no reasonable person could take the view adopted by the trial court.” *In re Marriage of Getautas*, 189 Ill. App. 3d 148, 153 (1989). Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides that in a dissolution of marriage case, the circuit court “shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors ***.” 750 ILCS 5/503(d) (West 2016). One such factor includes: “(1) each party’s contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property ***.” *Id.* § 503(d)(1). Another factor is: “(2) the dissipation by each party of the marital property *** at *** a date or period of time during which the marriage began undergoing an irretrievable breakdown ***.” *Id.* § 503(d)(2)(ii).

¶ 30 In this case, we note that Michael uses the word “dissipation” and briefs a portion of this issue by using language set forth in the dissipation factor above. He argues: “Clearly, the dissipation occurred after the marriage was undergoing an irretrievable breakdown because it occurred while the divorce was pending.” However,

notwithstanding the language used, Michael readily concedes that his claim is not based on the dissipation factor—which is applicable only to marital property—but on the first factor above, which considers “each party’s contribution to the acquisition, preservation, or increase or decrease in the value of marital or non-marital property.” *Id.* § 503(d)(1). We review the issue in this context.

¶ 31 On appeal, Michael attempts to attribute fault to Christie for the decrease in value of his nonmarital property. Specifically, he contends that the equity on his nonmarital home was lost because of Christie’s refusal to make mortgage payments after he was incarcerated. He places much emphasis on money Christie had in her possession which could have been used to prevent the foreclosure. However, Michael’s position on appeal is contradicted by his position at the trial. Evidence at trial indicates that Michael voluntarily assumed fault for the loss of the equity on his house. Regarding the unpaid mortgage, he testified: “[I]t was my fault that it didn’t get paid. I got arrested.”

¶ 32 Notwithstanding his testimony at trial, Michael asserts on appeal that, because he was incarcerated, he had no notice that the mortgage was going unpaid. Despite this claim, we are mindful that Michael was represented by counsel who could have inquired into the status of the mortgage payments. Also noteworthy is the evidence that after Michael’s incarceration, his son facilitated the business of selling Michael’s vehicle and allocating the funds from the sale. Accordingly, Michael had the means to keep tabs on his house and the associated mortgage payments.

¶ 33 Moreover, the record shows that—even if a zero sum were applied to Christie’s housing expenses—her overall monthly expenses would still have exceeded her income.

Christie testified as follows: that she knew Michael was the owner of the house and she was unaware of whether she would be awarded the house in the divorce; at the time of trial, Christie had not received the \$50,000 that she would have used to redeem the house from foreclosure; Michael quitclaimed the house to her after foreclosure proceedings had already commenced; after Michael's incarceration, Christie assumed paying for all of the children's expenses that Michael previously shared; Christie lost a van to repossession as a result of the divorce proceedings; and Christie resigned a job so she could cash in an associated retirement account and use the proceeds to buy a home, although the retirement account had not yet been disbursed to her at the time of the trial. This testimony was unrebutted.

¶ 34 As a final note, there is no reason to believe that the circuit court did not consider the equity that was lost when it divided the marital property. The lost equity was a topic that was covered extensively at trial and clearly in the purview of the circuit court when the final judgment was entered. There is a presumption that the circuit court considers proper evidence in reaching its result. See *Marcus v. Marcus*, 24 Ill. App. 3d 401, 406 (1974). Moreover, the circuit court stated in its order that it had "considered all of the evidence." Given these facts, we cannot say that no reasonable person would have taken the view adopted by the circuit court. Accordingly, the circuit court did not abuse its discretion by not faulting Christie for the decrease in value of Michael's nonmarital home and did not abuse its discretion by not ordering Christie to reimburse Michael for the lost equity in its division of the marital property. See *In re Marriage of Getautas*, 189 Ill. App. 3d at 153.

¶ 35

II. 503(g) Trust

¶ 36 While Michael does not appeal the actual establishment of the 503(g) trust, his second issue on appeal is whether the circuit court erred in the following ways with regard to the following aspects of the trust: (1) by assigning Christie as an interested party to be the trustee; (2) by failing to order the return of any unused funds of the trust to Michael; and (3) by funding the trust with a confiscatory portion of Michael's nonmarital property. We review this issue under an abuse of discretion standard. See *In re Marriage of Andrew*, 258 Ill. App. 3d 924, 928 (1993). See also *In re Marriage of Hobson*, 220 Ill. App. 3d 1006, 1007 (1991).

¶ 37 The circuit court established the trust in this case, pursuant to section 503(g) of the Act. That section provides: "The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, physical and mental health, and general welfare of any minor[] [or] dependent *** of the parties. ***." 750 ILCS 5/503(g) (West 2016). With these principles in mind, we turn to Michael's individual challenges regarding the trust.

¶ 38

A. Christie as Trustee

¶ 39 Michael first argues that the circuit court erred by appointing Christie as the trustee over the trust. As a threshold matter, we note that Michael waived this issue for failing to raise it at the trial level. See *Webber*, 368 Ill. App. 3d at 1023 (issues not raised with specificity in posttrial motion are waived and may not be raised for the first time on appeal). The only issue relating to Christie and the trust that Michael raised in his

posttrial motion was that the circuit court did not impose on Christie any restrictions, conditions, or accounting requirements in her role as trustee. He made no challenge relating to her actual appointment as trustee and consequently waived the issue.

¶ 40 Even assuming, *arguendo*, that waiver does not apply, we still find the circuit court did not abuse its discretion by appointing Christie as trustee. “The appointment of a fit and proper person to be trustee involves a decision within the trial court’s broad discretion.” *In re Marriage of Pasquesi*, 2015 IL App (1st) 133926, ¶ 22. “As a general rule, interested persons should not be trustee of a trust.” *In re Marriage of Vucic*, 216 Ill. App. 3d 692, 702 (1991). However, we note that because every case is different, “[t]he power to appoint trustees is a very broad one, left to the sound discretion of the court, and in the determination of which the court should consider all the circumstances bearing on the matter.” *Id.*

¶ 41 Here, Michael cites *In re Marriage of Vucic*, in which the circuit court found it plain error to appoint the mother as trustee of a 503(g) trust. 216 Ill. App. 3d at 701. However, we distinguish that case because in *Vucic*, the corpus of the trust was to be returned to the father upon termination of the trust, which the circuit court in that case emphasized more than once when finding it improper for the mother to be the trustee. *Id.* at 702. In this case, there will be nothing left in the trust so long as the funds are used for the purposes reflected in the record. Moreover, unlike the instant case, the husband in *Vucic* had children from a previous marriage to consider when the trust was funded. *Id.* at 704-05.

¶ 42 Regarding the particulars of Christie being the trustee in this case, Michael contends that no control systems were implemented by the circuit court to reduce the possibility of wrongdoing. He argues that proper distribution of the funds cannot be guaranteed “without adequate safeguards.” Michael specifies that the circuit court did not require annual accountings to show how the funds would be distributed. We find no need for accountings because the entire amount of the \$247,576 ordered into the trust was fully accounted for in advance at the trial and is set forth in the record. Accordingly, any allegations of potential wrongdoing by Christie are unfounded and the impropriety of her being trustee over the trust is belied by the record. Considering the broad discretion of the circuit court and all of the circumstances bearing on the matter (see *In re Marriage of Vucic*, 216 Ill. App. 3d at 702), we find the circuit court did not abuse its discretion by appointing Christie as trustee of the trust.

¶ 43 *B. Unused Funds*

¶ 44 Michael next argues that the circuit court erred by failing to order the return of any unused funds of the trust to him when the trust terminates. The language of the trust itself indicates that the funds may be used for, *inter alia*, “non-minor expenses,” implying college expenses. As Michael aptly notes, the circuit court stated as follows in its judgment: “That the parties['] minor children will attain the age of majority in the year 2020. *** \$247,576.00 shall be transferred into said trust from [Michael’s] [TSP] to provide for [Michael’s] ongoing child support, non-covered health and activity expense obligations until the children attain the age of majority, which said child support is due and payable until May 31, 2020.” Although the judgment cites the full amount of

\$247,576, it makes no mention of non-minor expenses—as did the language of the trust—and seemingly established May 31, 2020, as the termination date of the trust. The record shows that May 31, 2020, is the date the twins will graduate from high school. However, because the amount of the trust includes one-half of the total amount of the expenses for the twins to attend college for four years, the termination date of the trust must allow for college attendance.

¶ 45 Michael argues that because the trust was funded with his nonmarital property, any leftover money should be returned to him. We agree and are mindful of the testimony regarding the possibility of either or both of the twins opting out of attending college. Christie testified that it would be appropriate for any excess funds in the trust to be returned to Michael if the twins did not attend college or did not owe the full amounts earmarked for college expenses. Accordingly, we modify that portion of the circuit court’s judgment to state that the trust shall terminate when the twins graduate from high school or when they graduate from college, whichever occurs latest, and whatever funds that are not used for college expenses for the twins shall be distributed by the trustee to the respondent. (See Illinois Supreme Court Rule 366(a) (eff. Feb. 1, 1994) (reviewing court may exercise powers of amendment of the circuit court)).

¶ 46 *C. Funding of the Trust*

¶ 47 Michael’s final argument regarding the trust is that the circuit court erred by funding it with a confiscatory portion of his nonmarital property. In his posttrial motion he generally contends that the trust “is confiscatory and exceeds dramatically any child support obligation [Michael] would have been ordered [to pay] under statutory

guidelines. In effect, the [c]ourt ordered that [Michael] pay over \$80,000 per year as child support[,] which *** exceeds his earnings for any year that support would have been ordered.” This statement is erroneous. Clearly, in making such an allegation, Michael falsely assumes that the trust will be distributed in approximately three years, which is only until the twins graduate from high school. Such a three-year distribution period would result in an allocation of over \$80,000 per year as Michael suggests. Granted, this statement is reinforced by the termination date of May 31, 2020, that was established in the judgment by the circuit court. However, as noted, the date established by the circuit court and Michael’s corresponding argument regarding the length of the allocation of the trust both fail to account for the twins attending college for four years. We amended the termination date of the trust for that reason. Accordingly, Michael’s argument that the trust is funded with a confiscatory amount of his nonmarital property is without merit.

¶ 48 Christie testified pursuant to her position statement and requested that the trust be funded to support the twins for 58 months at \$1660 per month, or 28% of Michael’s net, preincarceration earnings—the amount set forth in the child support statute that was in effect when Christie filed the petition for dissolution. Michael made no objection to this amount at the trial, nor did he offer any alternative evidence for the circuit court to consider when funding the trust for this purpose. His only testimony regarding the amount of the trust in any capacity was not in reference to the total amount of the trust, but only in specific reference to the amount that should be used for the twins to attend college. That testimony was as follows:

“Q. Now, one of the things that is up for discussion is the need for your children to go to college, and you’re in favor of that?

A. Absolutely.

Q. How do you want to structure that if the Judge says to you, look, I’m going to give the 503(g) Trust, meaning I’m going to set aside some of your stuff to pay for their college or maybe pay for some future support? How much do you think is a fair amount?

A. Boy, I don’t even know.

Q. You said an amount to me before, and that’s what I was asking you about. So I don’t want to put an answer in your mouth.

A. Okay. Right. Yeah, we discussed before I would think \$100,000 total would be a fair amount of money.”

¶ 49 This testimony is the only evidence Michael offered for the circuit court to consider regarding the trust amount. The amount suggested is clearly arbitrary, as it was not based on any supporting evidence, but only on Michael’s opinion that “\$100,000 total would be a fair amount of money.” Moreover, Michael’s suggested \$100,000 for college attendance exceeds the actual amount that was requested and ordered into the trust for that purpose. Christie testified that half of the amount for tuition, housing, and meal expenses for four years at SIU Edwardsville for the twins totaled \$83,896. This amount was incorporated by the circuit court into the total amount of the trust.

¶ 50 We reiterate that Michael was silent at the trial when Christie presented her evidence on the issue of the amount of support for the twins before they graduated from

high school and his posttrial motion only contains the general contention that the trust “is confiscatory and exceeds dramatically any child support obligation [Michael] would have been ordered under statutory guidelines.” As discussed and resolved, *supra*, this argument was made in conjunction with Michael’s allegation that over \$80,000 per year was awarded for support. Only on appeal does Michael raise the specific contention that the wrong procedure required for the calculation of child support was used at trial under the wrong statutory guidelines and incorporated into the judgment regarding the funding of the trust. Moreover, only on appeal does Michael argue that the amount placed into the trust for the twins’ support is an abuse of discretion when considered with the other property division ordered by the circuit court. Accordingly, Michael has waived these particular arguments and we refuse to consider them. See *Webber*, 368 Ill. App. 3d at 1023.

¶ 51

III. Thrift Savings Plan

¶ 52 Michael’s final issue on appeal is whether the circuit court erred in its calculation of the marital portion of the TSP. We find that Michael waived this issue by failing to object at trial or to present his own evidence on what he perceived to be the proper amount of the marital portion of the TSP. He raised it for the first time in his posttrial motion, which is improper. See *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 433 (2005) (when a litigant presents new facts to the court in a posttrial motion, this is an attempted second bite at the apple which circuit court has discretion to consider). See also *Antol v. Chavez-Pereda*, 284 Ill. App. 3d 561, 566 (1996) (issues raised for the first time in a posttrial motion will not be considered on appeal).

¶ 53

CONCLUSION

¶ 54 For the foregoing reasons, the July 12, 2017, judgment of the circuit court of Madison County is affirmed as modified herein.

¶ 55 Affirmed as modified.