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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
ELIZABETH A. MCDONALD,	)	of Du Page County.
	)	
Petitioner-Appellant and Cross-	)	
Appellee,	)	
	)	
and	)	No. 04—D—2121
	)	
THOMAS MCDONALD,	)	
	)	Honorable
Respondent-Appellee and Cross-	)	George J. Sotos,
Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

*Held:* Errors of law existed in the trial court's determination of child support and allocation of certain stock options, but reviewing court would defer to the trial court's role as finder of fact as to the remaining issues raised in appeal.

In June 2008, the circuit court of Du Page County entered a judgment for dissolution of the marriage of the petitioner, Elizabeth McDonald, and the respondent, Thomas McDonald. The parties filed posttrial motions, and on December 14, 2009, the trial court entered an order amending its earlier judgment. Elizabeth appeals, challenging several aspects of the amended judgment including

the assignment of various tax liabilities, the characterization and allocation of certain assets and liabilities including payments from her father and stock options, and the calculation of child support.<sup>1</sup> We affirm in part, reverse in part, and remand for further proceedings.

### BACKGROUND

The pleadings filed and the amount of evidence adduced at trial in this case were substantial. As much of it is not relevant to this appeal, we summarize here only the essential facts and procedural history, and discuss other relevant evidence in the context of the particular arguments raised on appeal. The parties were married on June 22, 1991. They have two children: Ian, born on January 29, 1998, and Griffin, born on August 8, 2001. Both children have certain cognitive or developmental disabilities. In September 2004, Elizabeth filed a petition for dissolution.

The trial began in February 2007 and continued for more than 40 days, and was mostly concerned with property issues. (Before the trial started, the parties entered into an agreement under which Elizabeth would have sole custody of the children and Thomas would have very limited visitation.) On May 7, 2008, the trial court issued a memorandum opinion stating its rulings on various disputed issues. The parties drafted a judgment for dissolution of marriage in conformity with the memorandum opinion, and the trial court entered it on June 19, 2008. Thereafter, both parties filed posttrial motions asking the court to reconsider portions of its judgment. On April 7, 2009, the trial court issued another memorandum opinion containing its rulings on the posttrial motions, and asking the parties to prepare a corresponding order amending the judgment. The

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<sup>1</sup>Thomas filed a cross-appeal, but then stated in his brief that he wished to withdraw it. He filed no brief on the cross-appeal and did not pursue it further. Accordingly, we dismiss the cross-appeal for lack of prosecution.

parties could not agree on the form of the order. Elizabeth prepared an order that reflected the trial court's April 7, 2009, memorandum and went no further. Thomas prepared an order that differed from the trial court's memorandum in certain respects, mostly by including additional provisions regarding the allocation of the parties' income tax liabilities. On December 14, 2009, the trial court entered the draft order prepared by Thomas. Elizabeth filed a timely notice of appeal.

### ANALYSIS

On appeal, Elizabeth raises four arguments. First, she argues that the trial court erred in reconsidering its initial allocation of all of the liability associated with the parties' 2004-2006 income taxes to Thomas, and now requiring her to pay a portion of that liability. Second, she challenges the trial court's award of statutory child support on only some of Thomas's income (his base salary) rather than his entire income. Third, she argues that the trial court erred in finding that some of the amounts paid by her father toward the acquisition or maintenance of marital assets were gifts to the marriage rather than loans. Finally, with respect to certain stock options received by Thomas during the marriage, Elizabeth contends that the trial court erred in two ways: first, in refusing to allocate those options to either party despite her request to do so; and second, in entering the written order prepared by Thomas, which allocated the options to Thomas, contrary to the trial court's earlier ruling. We take each argument in turn.

#### Allocation of Income Tax Liability

Elizabeth's first argument concerns who should bear the liability associated with the parties' income taxes for the years 2004 through 2006. In the judgment for dissolution, the trial court initially ordered Thomas to bear the entire liability, accepting Elizabeth's argument that Thomas could have avoided many if not all of the penalties and interest that had accrued by simply paying

the taxes on time. In his posttrial motion, Thomas asked the court to reconsider this decision, arguing that taxes were a marital debt rather than an individual one; that Elizabeth bore some fault for the delay in paying taxes and filing the returns; and that other marital debts for which Thomas was responsible made it unfair to impose the entire burden on him. In response, Elizabeth argued that it was Thomas's fault that the taxes were not paid in full because he had the sole income and therefore the sole ability to make the payments, and she now had even less ability to pay the tax burden than Thomas. (As of the time that posttrial motions were filed, the parties estimated that approximately \$250,000 was owed to the federal government and various states for taxes, penalties and interest for the period from 2004 through 2006.) In its April 2009 memorandum opinion ruling on this issue, the court stated:

“The court has revisited this issue and accepts the arguments advanced by Mr. McDonald. The court's trial and its hearing notes of June 15, 2007, show Ms. McDonald objected and would not agree to the use of marital funds for the payment of income tax liability. The court now believes a more just allocation of these debts should be made.”

The trial court then ordered Thomas to pay 75% of the tax liability, and Elizabeth to pay 25% of that liability.

A trial court has broad discretion in its distribution of marital assets and liabilities, and we review its decisions only for abuse of discretion. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 161 (2005). A trial court abuses its discretion when its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court (*People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006)), or where its ruling rests on an error of law (*Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009)).

Elizabeth argues that the trial court's reconsidered allocation of the tax liabilities was an abuse of discretion, because the record does not support the trial court's statement that on June 15, 2007, she objected to paying the taxes from the marital estate. She also argues that the record as a whole supports the opposite conclusion that she wanted the taxes to be paid and sought their payment on several occasions. Thomas responds that he was prevented by the trial court from making tax payments and filing returns, and that Elizabeth opposed his using marital funds to pay taxes.

Our review of the record reveals that there is some truth to both parties' arguments. Elizabeth is correct that a transcript of the proceedings on June 15, 2007, which appears to be a complete record of those proceedings, does not contain any statement by her regarding taxes or the use of marital funds to pay for them. This in itself does not compel reversal of the trial court's decision, however, because we may affirm on any basis appearing in the record, even if the trial court's stated reason for its decision is erroneous. *See City of Chicago v. RN Realty, L.P.*, 357 Ill. App. 3d 337, 344 (2005) ("A reviewing court may sustain a trial court's decision on any basis appearing in the record"). Thus, we look to the entire record in reviewing the trial court's ultimate allocation of the tax liability.

The record as a whole demonstrates that the parties took varying positions at different times on the issue of paying taxes, although in general Elizabeth supported such payment. In November 2004, a few months after the petition for dissolution was filed, Elizabeth sought and received an order requiring Thomas to pay the parties' living expenses from his income and then deposit the remainder of his income in a joint account. Taxes were not being withheld from Thomas's income during this time, and the order did not address the payment of taxes. Judging from a series of

petitions for rule to show cause that were filed by Elizabeth, Thomas did not comply with the order and continued to retain the excess income, using it as he saw fit. In October 2005, Elizabeth sought to compel Thomas to complete and file the 2003 and 2004 income tax returns, arguing that his failure to do so constituted a waste of marital assets because it resulted in penalties and interest being assessed. Thereafter, it appears that Thomas filed the 2003 return but did not file the return for 2004.

In April and May of 2006, Thomas unilaterally made a series of tax payments (apparently using bonuses or other supplemental payments he was receiving from his employer). He paid a total of almost \$82,000 toward 2005 taxes at this time, and \$2,000 toward 2006 taxes. He did not inform Elizabeth or seek leave of court to do so. In June 2006, the trial court ordered that Thomas could not make any tax payments until further order of court. This order may have resulted from Elizabeth's complaints that Thomas was withholding money he should be contributing to the family's living expenses and instead was using it as he wished, but the record is not clear. Despite the court's order, between January and March 2007, Thomas made more tax payments of \$40,000 toward 2004 taxes and approximately \$91,000 toward 2006 taxes. Once again, it appears that he did not inform Elizabeth in advance or seek leave of court.

In March 2007, a month after the trial began, Thomas filed a motion seeking leave to file the 2004 and 2005 tax returns, and to pay the remaining taxes owed for those years from the marital estate. Oral argument on the motion was heard in April 2007. At that point, the parties estimated that the total of the taxes, penalties and interest owed was almost \$150,000. This amount was greater than the entire contents of a particular joint bank account, which the trial court treated as the only liquid asset of the marital estate, referring to it as "the marital estate." Elizabeth opposed the motion, arguing that there was no rush as the returns were already two years overdue, and that the parties had

a good-faith dispute about whether the tax liability should be assigned to the marital estate or Thomas alone (she believed that Thomas, and not the marital estate, should pay the tax liability). The trial court denied Thomas's motion to pay taxes from the marital estate, stating that it wished to hear the testimony at trial (regarding the assets and liabilities of the marital estate and the possible allocation of debts to individual parties) before it permitted the depletion of the marital cash on hand to pay taxes. Elizabeth maintained the same position in later disputes between the parties in which the tax liability issue arose, including one exchange on June 14, 2007. This appears to be the exchange that the trial court intended to cite in its April 2009 memorandum opinion.

The course of events outlined above is subject to conflicting interpretations regarding the parties' relative fault for the failure to file returns and pay taxes, and the resulting accrual of penalties and interest. In such circumstances, we must defer to the trial court's determination, as it rests on that court's greater familiarity with the parties' arguments and conduct over time, and its greater ability to weigh the evidence, observe witnesses and hear their testimony firsthand, and make factual findings. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007). Moreover, just as income earned by either spouse during a marriage is presumed to be marital property (750 ILCS 5/503(b)(1) (West 2006); *In re Marriage of Mahaffy*, 206 Ill. App. 3d 859, 868 (1990)), the liability for the tax on that income is presumed to be a marital debt. Thus, it was neither arbitrary nor inappropriate to assign some of the responsibility for that debt to Elizabeth. We note that the trial court assigned the great majority of the debt (75%) to Thomas instead of dividing it evenly or according to the percentage it used in allocating the marital assets. (The assets were generally apportioned 60% to Elizabeth, 40% to Thomas.) This greater allocation to Thomas may reflect that the trial court found that Thomas bore greater responsibility for the size of the debt, or had greater ability to pay, both

appropriate factors to take into consideration. *See* 750 ILCS 5/503(d) (West 2006) (listing factors to be taken into account in distributing the marital estate). We cannot say that, faced with these circumstances, no reasonable person would take the view adopted by the trial court, (*Anderson*, 367 Ill. App. 3d at 664), or that the trial court’s decision rested on an error of law (*Cable America*, 396 Ill. App. 3d at 24). Accordingly, we find that the trial court’s reconsidered distribution of the tax liability for 2004 through 2006 was not an abuse of discretion.

Elizabeth also argues that one other aspect of the December 2009 order amending the judgment was entered in error. In its April 2009 memorandum opinion, the trial court issued various rulings and then instructed the parties to prepare an order reflecting those rulings. However, when the parties were drafting the order, Thomas insisted on inserting a provision that would penalize Elizabeth if she chose to file separate returns for the tax years 2004 through 2006, by making her responsible to pay 75% of any increase in Thomas’s tax liability that resulted from filing separately. Elizabeth would not agree, and as a result, the parties each submitted a proposed order to the trial court, and appeared before the trial court on November 24, 2009, to present oral arguments on which order should be entered. During that hearing, Thomas freely acknowledged that his proposed order “went beyond” the provisions of the April 2009 rulings, but he argued that the additional provisions were included in response to issues that arose during the drafting process, and were included in an effort to prevent the parties from having to return to court later to resolve the issues. The trial court ultimately entered Thomas’s version of the order amending judgment.

Elizabeth contends that the imposition of this provision was an abuse of discretion, and alleges that Thomas “surreptitiously” snuck the provision into the order. However, it is clear that the trial court was aware of the provision’s inclusion in Thomas’s draft order, and thus we must infer

that the court deliberately adopted the provision, perhaps in order to ensure that the parties filed the joint returns that would result in the lowest cost to the marital estate. Elizabeth has not shown that the trial court's inclusion of the provision was arbitrary or ill-conceived, and thus we do not find that it was an abuse of discretion. *Wojcik*, 362 Ill. App. 3d at 161.

### Child Support

Elizabeth next argues that the trial court erred in setting the child support owed by Thomas, because it applied the guidelines contained in the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505 (West 2006)) to part of Thomas's income (his base salary), but not to the remainder of his income (bonuses and various other payments he received from his employers). In the findings contained in its May 2008 memorandum opinion, the trial court found that Thomas was "a high earner" whose base salary was \$300,000 and who anticipated receiving bonuses of over \$400,000 in that year. The trial court calculated that the guidelines support on Thomas's base salary would be \$4,557 per month, and stated that it "would not be inclined to deviate downward from guideline support since the children had enjoyed an excellent lifestyle in Hinsdale [before the dissolution] and should be allowed to approach it again." The latter portion of the memorandum opinion ordered as follows:

"Thomas McDonald shall pay for and as child support, 28% of his net monthly income. In addition, he shall pay 15% on the first \$200,000 of his net bonus income, and 5% on all additional net bonus income received during the calender [*sic*] year."

Elizabeth argues that the trial court's order should have applied the guidelines to all of Thomas's income, not just his base salary, and urges that its failure to do so conflicts with its rejection of any downward deviation from the guidelines. We agree.

In general, we review a trial court's determination of child support for abuse of discretion. *In re Marriage of Burns and Stewart*, 357 Ill. App. 3d 468, 470 (2005). An abuse of discretion occurs where the trial court's ruling is arbitrary (*Anderson*, 367 Ill. App. 3d at 664) or rests on an error of law (*Cable America*, 396 Ill. App. 3d at 24). Here, we believe that the latter type of error occurred.

Section 505 of the Act (750 ILCS 5/505 (West 2006)) sets out guidelines to be used in calculating the amount of child support due in any particular case. The guidelines specify that child support should generally be set at a given percentage of the noncustodial parent's net income, with the percentage varying depending on the number of children for whom support is required. *See* 750 ILCS 5/505(a)(1) (West 2006) (for example, the percentage for two children is 28%). "Net income" is defined broadly, as "the total of all income from all sources" minus certain enumerated deductions. 750 ILCS 5/505(a)(3) (West 2006). Income from bonuses is included within this definition. *In re Marriage of Anderson and Murphy*, \_\_\_ Ill. App. 3d \_\_\_, 938 N.E.2d 207, 214 (2010) (trial court's failure to include bonus in income used to calculate child support under the guidelines was abuse of discretion); *see also In re Marriage of Rogers*, 213 Ill. 2d 129, 139 (2004) (quoting with approval the definition of "income" found in Black's Law Dictionary 778 (8th ed. 2004): "money or other form of payment that one receives, usually periodically, from employment, business, investments, royalties, gifts, and the like"). Income received by a supporting parent should not be excluded from the calculation of support under the guidelines simply on the grounds that it may not recur or may vary in amount from year to year. *Rogers*, 213 Ill. 2d at 138-39. Thus, Thomas's bonuses and other payments from his employers should have been included in his income when calculating child support.

Section 505(a)(2) provides that the guidelines “shall be applied in each case unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child” and the evidence presented on certain relevant factors. 750 ILCS 5/505(a)(2) (West 2006). This provision creates a rebuttable presumption that a child support award should be set in conformity with the guidelines percentage of the noncustodial parent's net income. *Anderson v. Heckman*, 343 Ill. App. 3d 449, 453 (2003). “Compelling reasons must be presented to overcome the presumption that the guidelines will be applied.” *Id.* at 454; *see also In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1022 (2003) (“case law has imposed a presumption that the guidelines apply absent compelling reasons”; citing cases). The burden of showing that such compelling reasons exist is on the party seeking the deviation from the guidelines. *Garrett*, 336 Ill. App. 3d at 1022. In the event that the trial court determines that a deviation is warranted, it must state its reasons for the deviation. 750 ILCS 5/505(a)(2) (West 2006).

Here, the trial court considered the possibility of downward deviation from the guidelines and expressly rejected it, finding that the children had enjoyed a high standard of living during the marriage and should be allowed to approach this standard again following the dissolution. There was no error in taking this approach. *See Garrett*, 336 Ill. App. 3d at 1023 (citing supreme court case law rejecting the argument that minor children are only entitled to their “shown needs,” and instead looking to the standard of living that the children would have enjoyed if the marriage had not been dissolved). The trial court did not even discuss, let alone adopt, any findings that would support a downward deviation from the guidelines. It thus appears that the trial court’s order that Thomas pay a lower percentage of his bonus income (15% or 5% instead of the statutory guideline of 28%) was not an intentional deviation from the statutory guidelines, but simply rested on a misapprehension

of the law—a mistaken belief that bonus income was not part of the net income on which the guidelines percentage should be imposed. As noted above, this was incorrect, as the definition of net income in section 505—“all income from all sources”—does not distinguish between amounts received as base salary and those received as bonuses. *Marriage of Anderson and Murphy*, \_\_\_ Ill. App. 3d \_\_\_, 938 N.E.2d at 214. Accordingly, the trial court abused its discretion in ordering that Thomas pay less than 28% of his bonuses as child support. *Cable America*, 396 Ill. App. 3d at 24. We therefore reverse that portion of the judgment of dissolution and subsequent orders imposing a lesser amount of child support, and remand for a recalculation of the proper amount of child support due, beginning when the judgment for dissolution was entered, based upon all of Thomas’s net income at that time.

Classification of Certain Payments from Elizabeth’s Father

Elizabeth’s next contention on appeal is that the trial court erred in ruling that certain payments by her father were gifts rather than loans, and by failing to order repayment of certain expenditures for living expenses after she filed for dissolution, for which she was forced to use her own nonmarital funds.<sup>2</sup> In reviewing the trial court’s finding that certain payments were gifts rather than loans, we defer to its greater opportunity to view the evidence, hear testimony firsthand, and assess credibility, and will reverse such a finding only if it is against the manifest weight of the evidence. *In re Marriage of Schmidt*, 242 Ill. App. 3d 961, 969 (1993). We review the trial court’s

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<sup>2</sup>Elizabeth also describes the trial court’s rulings on other aspects of its division of the marital debt in a manner that suggests she disagrees with these rulings, but she does not advance any legal argument with respect to other rulings, and so we do not address them here. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006).

ultimate allocation of marital assets and debts under the abuse of discretion standard. *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 868 (1994).

The evidence established that Elizabeth's father, Sheldon Kavieff, made various payments for the benefit of Elizabeth and the marriage. For instance, Elizabeth testified that she borrowed \$50,000 from her father prior to the marriage to purchase a condominium in Novi, Michigan. According to Elizabeth and her father, they agreed that she would pay back the \$50,000 and 5% interest when she sold the condominium. Elizabeth and Thomas married soon afterwards, and Elizabeth added Thomas's name to the title of the condominium. However, Elizabeth continued to view the parties' interest in the condominium as being subject to the \$50,000 loan. In the spring of 1995, Elizabeth told her father that she and Thomas could not pay back the loan upon the sale of the condominium because if they did, they would not have enough for the down payment on a house in Shaker Heights, Ohio, where they were moving for Thomas's job. Sheldon agreed that they could repay the loan while they lived in Shaker Heights or after they sold that house.

Elizabeth testified that, while the parties were living in Shaker Heights, her father assisted them with various payments, including approximately \$4,000 for foundation repairs (paid directly to the contractor); \$12,000 for repairs to the guest bathroom and master bedroom; \$8,300 to allow Thomas to pay off his car lease; and \$23,000 to enable Thomas to meet a margin call on stock he owned. Elizabeth and Sheldon testified that all of these payments were loans, to be repaid with interest at the prime rate. Thomas testified that Sheldon made these payments, but they were gifts, not loans. It is undisputed that none of these amounts was repaid.

In 1997, Thomas was offered a job with Ernst and Young in Chicago, and the parties moved to Illinois, where they sought to buy a home in Hinsdale. Elizabeth told her father that, in order for

them to be able to afford a home in Hinsdale they would need to put off repaying the \$50,000 loan, and would also need to borrow an additional \$100,000. Elizabeth testified that Thomas promised to repay the \$100,000 loan by paying \$20,000 each year for five years from his partnership bonuses, and to repay the \$50,000 within another two years.

Sheldon Kavieff testified that he made all of the above payments, and that they were intended to be loans, not gifts. He stated that in 1996 he had a conversation with Thomas in which he agreed to loan Thomas \$23,000 to cover the margin call on Thomas's stock. When the parties were planning to move to Illinois, Thomas and he had another discussion in which Thomas showed him a financial analysis and told him that the parties needed to borrow \$100,000 in order to buy a house. Thomas promised to repay the loan by making four yearly payments of \$25,000, plus interest. Although Sheldon was concerned about loaning the parties more money, he eventually liquidated some securities and loaned them the \$100,000. In January 2001, he received a check for \$25,000 from Thomas. That was the only payment he received on the loan. Sheldon also testified that, after Elizabeth filed the petition for dissolution and Thomas froze their accounts, he gave Elizabeth money for living expenses for herself and the children totaling \$48,500.

Thomas testified that Elizabeth told him that Sheldon would give them \$100,000 toward the Hinsdale house, and he believed that they had no obligation to repay either that amount or the \$50,000 from the sale of the Novi condominium. However, when shown the check to Sheldon for \$25,000, Thomas agreed that he had written the check, and stated that he did not know whether he paid this money to Sheldon as a partial payment toward the \$100,000 loan.

In its May 2008 memorandum opinion, the trial court acknowledged that one of the matters that had absorbed much of its time (and the time of the parties and their lawyers) was the issue of

whether the amounts given to Elizabeth by her father were loans or gifts to the parties. The trial court did not find that any of the pre-dissolution payments were loans from Sheldon to the marital estate. Rather, as to both the \$50,000 used to purchase the Novi condominium and the \$100,000 used to purchase the Hinsdale house, the court found that the payments were loans from Sheldon to Elizabeth, which Elizabeth in turn loaned to the marital estate. The trial court applied section 503(c)(2) of the Act (750 ILCS 5/503(c)(2) (West 2006)), under which one party may be reimbursed for any contribution that party made from his or her nonmarital estate to the marital estate, if (1) the party seeking reimbursement can show, by clear and convincing evidence, that the contribution was not intended as a gift, and (2) the contribution is traceable. The trial court held that Elizabeth had presented sufficient evidence to establish that the \$50,000 and \$100,000 payments were always viewed by Elizabeth as loans, not gifts. The trial court stated that the \$25,000 check from Thomas to Sheldon was evidence that Thomas viewed the contributions as a loan, and found believable Elizabeth's account of a telephone call between Thomas and Sheldon regarding the outstanding loans, held shortly before Thomas wrote the \$25,000 check. These contributions were also traceable. Accordingly, Elizabeth was entitled to be reimbursed by the marital estate in the amount of \$125,000 (\$150,000 minus the \$25,000 already repaid). The trial court declined to assess interest, finding that the amount of the claimed interest had not been proven.

As to the remaining predissolution payments by Sheldon, however—the payments of approximately \$16,000 for home repairs, \$8,300 to buy out the car lease, and \$23,000 for the margin call—the trial court found that the evidence was insufficient to establish that they were intended as loans rather than gifts. Elizabeth challenges this finding on appeal, arguing that Thomas's testimony that the amounts were gifts rather than loans was not credible, and her testimony and that of her

father supported the opposite conclusion. However, her argument amounts to no more than a request that we re-weigh the evidence, and this we will not do. *See People v. Smith*, 185 Ill. 2d 532, 542 (1999) (the weight to be given to the witnesses' testimony, the determination of their credibility, and the reasonable inferences to be drawn from the evidence are all matters within the jurisdiction of the trier of fact). This is particularly true when the issue is the nature of payments from one party's parents in the context of a dissolution:

“When a court reviews the parties’ marital assets and liabilities, transfers of money during the marriage from the parents of one of the parties are viewed with great skepticism because of the incentive for the parents and that spouse to conform their testimony at the dissolution proceeding so as to disadvantage the other spouse. \*\*\* A court of review should not second-guess the trial court’s factual findings on the validity of a debt when that finding is based upon the trial court’s assessment of the credibility of the witnesses and the weight it gives to their testimony [citations omitted], unless the trial court’s findings are against the manifest weight of the evidence [citation omitted].” *Blazis*, 261 Ill. App. 3d at 868.

Elizabeth has not shown that the trial court’s characterization of these transfers as gifts rather than loans was against the manifest weight of the evidence.

Elizabeth also challenges the trial court’s finding, in its initial judgment for dissolution, that the marital debt incurred for Elizabeth and the children’s living expenses after she filed the petition for dissolution amounted to only \$49,050. (This amount was transmuted to \$49,500 in the order of December 2009 amending the judgment; neither party seeks to change this amount on appeal.) Elizabeth argues that she presented evidence, including promissory notes from herself to her father, of an additional \$32,550 in post-dissolution payments from her nonmarital estate that were used for

the family's living expenses, for which she should be reimbursed from the marital estate. Elizabeth notes that the trial court did not specifically address these additional expenditures in its judgment, and asserts that this was an oversight that represents an abuse of discretion.

However, Elizabeth raised this same argument in her posttrial motion, and the trial court specifically rejected it. In its April 2009 memorandum opinion ruling on the parties' posttrial motions, the trial court stated that it had reviewed the record and its own notes, and concluded that it had in fact taken into account the matters raised by Elizabeth:

“[A]ny failure to specifically address each piece of evidence or testimony presented by Ms. McDonald in the court's *[sic]* was not by oversight. Rather, the court believed some of the claims presented were not sufficiently supported in the evidence or the law and therefore needed no affirmative rejection. The Judgment contained such rejection by inference.”

Although ideally a trial court should rule on each disputed matter brought before it, the law is clear that a trial court need not present reasons for its rulings on the allocation of marital assets and liabilities, and on review, we will uphold those rulings if support for them appears in the record. *Schmidt*, 242 Ill. App. 3d at 969. Here, the trial court expressly stated that its rejection of Elizabeth's claim for reimbursement of the additional \$32,550 was based on its finding that the claim was not sufficiently supported by the evidence. As before, we will not disturb this ruling on appeal. We therefore find no error in the trial court's classification and treatment of the payments from Elizabeth's father.

#### Allocation of Macquarie Stock Options

Thomas testified at trial that, after Macquarie acquired his employer, he entered into an employment agreement under which he would receive, among other things, 11,000 stock options.

In the judgment for dissolution, the trial court classified some of Thomas's Macquarie-related assets—his guaranteed bonuses from Macquarie and his 401k with Macquarie—as marital property. However, it did not mention the Macquarie stock options. Specifically, it did not mention them in the text of its May 2008 memorandum opinion or June 2008 judgment, nor include them in its listing of marital and nonmarital property in exhibit A to those decisions. Elizabeth pointed out this discrepancy in her posttrial motion and requested that the trial court allocate the stock options (and that it distribute 50% of them to her). In its April 2009 memorandum opinion ruling on the parties' posttrial motions, the trial court denied this request, stating without explanation: "Ms. McDonald's request for a modification to the Judgment to provide for an allocation of Macquarie [*sic*] stock options is respectfully denied." Even more mysteriously, the court's December 2009 order amending the judgment (which was drafted by Thomas) provided that "all Macquarie stock options are awarded to Thomas."

On appeal, Elizabeth challenges these rulings and orders in two respects. First, she argues that the stock options were marital property and that the trial court's refusal to distribute the stock options, which it classified as marital property, was an error of law. Second, she argues that the December 2009 court order impermissibly conflicts with the trial court's April 2009 ruling on the stock options and must be vacated. Elizabeth is correct on both points.

Section 503(b)(3) of the Act (750 ILCS 5/503(b)(3) (West 2006)) states that "all stock options granted to either spouse after the marriage and before a judgment of dissolution of marriage \*\*\* whether vested or non-vested or whether their value is ascertainable, are presumed to be marital property," unless the party asserting that they should be considered nonmarital property shows that they were acquired by one of the methods listed in section 503(a) of the Act. Thomas acknowledged

the existence of the Macquarie stock options, and he did not present any evidence that the stock options were acquired by one of the methods set out in section 503(a). Therefore, the stock options were marital property. *See In re Marriage of Peters*, 326 Ill. App. 3d 364, 368-69 (2001) (collecting cases holding that stock options, whether vested or nonvested, are marital property).

Pursuant to section 503(d) of the Act, in any proceeding for dissolution of marriage, “the court *shall* divide the marital property \*\*\* in just proportions,” considering various statutory factors. (Emphasis added.) 750 ILCS 5/503(d) (West 2006). In other words, the Act requires that marital property must be allocated “in just proportions,” either by assigning it wholly to one party or by dividing it between the parties. Here, the trial court’s judgment for dissolution failed to allocate the stock options in any manner, apparently due to an oversight. However, when Elizabeth brought this oversight to the trial court’s attention in her posttrial motion, the court persisted in refusing to allocate the stock options. This was error. *In re Marriage of Douglas*, 195 Ill. App. 3d 1053, 1059 (1990).

Finally, inasmuch as a portion of that order of December 14, 2009, (the award of the stock options to Thomas) contradicts the trial court’s refusal in April 2009 to allocate the stock options, the inconsistent portion of the order must be vacated. It is well established that, where a trial court’s written order conflicts with its oral pronouncement, the oral pronouncement controls. *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009). By the same token, where a written order drafted later by one of the parties conflicts with the trial court’s pronouncement in a memorandum opinion, and there is no indication in the record that the trial court intended to modify its earlier ruling, the earlier pronouncement must be viewed as controlling.

We note that this is not a situation like the changes made in the tax provisions of the December 2009 order from those set out in the April 2009 memorandum opinion. In that situation, the parties discussed the change during the hearing on which proposed order should be entered, and it is clear that the trial court was aware of the discrepancy between the proposed order and its earlier ruling, and consciously chose to adopt the modified provisions. No similar inference can be drawn here. In the hearing on which version of the order amending judgment to enter, the stock options were never mentioned, and there is no indication that the trial court knew that Thomas's draft order differed from its April 2009 memorandum opinion in this respect. Accordingly, we reverse the trial court's ruling refusing to allocate the Macquarie stock options, vacate the portion of the trial court's December 14, 2009, order that awarded the stock options to Thomas, and remand for the trial court to address the proper distribution of the Macquarie stock options.

#### CONCLUSION

For all of the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed in part, reversed in part, vacated in part, and remanded for further proceedings consistent with this decision. Specifically, the June 19, 2008, judgment for dissolution and the December 14, 2009, order amending the judgment are reversed as to the determination of child support. In addition, the order of December 14, 2009, is vacated as to the award to Thomas of the Macquarie stock options. In all other respects, the judgment entered on June 19, 2008, and amended on December 14, 2009, is affirmed. The cause is remanded for: (1) redetermination of child support going forward from the date of dissolution, applying the statutory percentage to all of Thomas's net income, including his base salary, bonuses, and any other income which he may have; and (2)

distribution of the Macquarie stock options. The cross-appeal filed by the respondent is dismissed for lack of prosecution.

Affirmed in part, reversed in part, and remanded for further proceedings.