2013 IL App (2d) 111080-U
No. 2-11-1080
Order filed April 18, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF PAUL G. CLAPS,	)	Appeal from the Circuit Court of McHenry County.
	)	
Petitioner-Appellant and Cross-Appellee,	)	
and	)	No. 09-DV-389
	)	
MARY A. CLAPS,	)	
	)	Honorable
Respondent-Appellee/ Cross-Appellant.	)	Gerald M. Zopp Judge, Presiding.

JUSTICE Birkett delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: In husband's appeal, the trial court's finding that husband dissipated $400,982 in marital assets was not against the manifest weight of the evidence; the trial court did not abuse its discretion in awarding wife statutory child support for the parties' child; the trial court did not err in denying husband's petition to terminate maintenance based upon allegation that wife was cohabiting on a resident, continuing, conjugal basis with another man; and trial court did not order husband to pay expenses related to property awarded to wife. In wife's cross-appeal, trial court erred in failing to find husband also dissipated $61,000 of the parties' IRA; trial court erred in listing 2009 federal and state tax refunds amounts as 2008 tax refund dissipation amounts; trial court properly found no dissipation of $50,000 in earnest money on cancelled real estate contract; and trial court did not abuse its discretion in denying wife's request for contribution for attorney's fees.

¶ 2 The Petitioner, Paul Claps, appeals from the judgment of dissolution of marriage from the respondent, Mary Claps. On appeal, Paul claims that the trial court erred in the following ways: (1) in finding that he dissipated $400,982 in marital assets; (2) in awarding Mary statutory child support for their son; (3) in denying his motion to terminate maintenance based upon its finding that Mary was not cohabitating with her boyfriend on a resident, continuing conjugal basis; and (4) in ordering Paul to pay expenses related to property that was awarded to Mary. On cross-appeal, Mary argues: (1) the trial court erred in finding that Paul only dissipated $400,982 in marital assets when she presented evidence that he actually dissipated marital assets in the amount of $607,238; and (2) the trial court abused its discretion in denying her request for contribution from Paul to pay her attorney's fees. For the following reasons, we affirm in part, we reverse in part, we vacate in part and we remand this cause for further proceedings consistent with this order.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that the parties were married on May 24, 1995. They had one son together, B.C., who was born on February 6, 2003. The parties lived together until December 31, 2008. At the time the judgment for dissolution of marriage was entered Paul was 48 years old and Mary was 44 years old. Paul was employed as a salesman at KC Printing and Mary was a stay-at-home mother. In 2010, Paul's end-of-year-pay stub indicated that his gross salary was $824,215.75.

¶ 5 At the time the marriage was dissolved the parties owned several pieces of real estate: (1) a home located at 4261 Whitehall Lane in Algonquin; (2) a home at 2300 Crabtree Lane in Algonquin; and (3) a vacant lot located at 3208 Arbor Lane in Prairie Grove, Illinois. The market appraisal value of each of the properties is less than the mortgage liens attached to each property. The parties had

significant debt that was secured by the real estate and several vehicles. In addition, both parties incurred credit card debt.

¶ 6 Paul filed a petition for dissolution of marriage on April 16, 2009. On September 15, 2009, Mary filed a notice of dissipation claim in which she alleged that Paul had dissipated the following marital assets: (1) money spent on the purchase of 2300 Crabtree Lane as well as money spent decorating and furnishing that property; (2) money lost on the purchase of lot 65 in the Timberhill subdivision of Prairie Grove, Illinois, or the subsequent purchase of 4416 Woodland Hollow Trail in Prairie Grove, Illinois; and (3) money spent on other unknown purposes or given to others for unknown purposes.

¶ 7 On September 22, 2009, the trial court entered the following temporary orders: (1) Paul was given exclusive possession of the residence on Crabtree Lane; (2) Mary was given exclusive possession of the residence on Whitehall Lane; (3) Paul was ordered to pay Mary $6,715 per month in temporary child support; (4) Paul was ordered to pay Mary $7,250 per month in temporary maintenance; (5) beginning on November 1, 2009, Mary was responsible for the first and second mortgage on the Whitehall Lane residence as well as its utilities and maintenance; (6) Mary was ordered to make payments on her two vehicles; (7) Mary was responsible for her credit card charges from October 1, 2009 and thereafter; (8) Paul was responsible for all credit card charges incurred prior to September 22, 2009; and (9) Paul was responsible for any other obligations of the parties.

¶ 8 On September 13, 2010, Paul filed a motion to clarify the trial court's September 22, 2009, order. In the motion, Paul requested that the court clarify its earlier order concerning the real estate taxes on the Whitehall property, and alleged that Mary had not paid the taxes on that property which were due in June and September, 2010. On October 28, 2010, in response to Paul's motion to

clarify, the court ordered that Paul was required to pay the real estate taxes, including any interest and penalties on the Whitehall property, "said payments to be without prejudice and subject to re-allocation at time of trial ***."

¶ 9 On January 27, 2011, Mary filed an amended notice of dissipation claim. In addition to the marital assets listed in the first notice of dissipation, Mary alleged that the following marital assets had also been dissipated: (1) the liquidation of an IRA in the amount of $91,192.20 and the subsequent spending of such funds; (2) the equity lost as a result of Paul's trading in the parties' 2007 Sprinter trailer for a 2008 Breckenridge trailer during the pendency of this matter; (3) money spent on the 2008 Breckenridge and the cost of furnishing it; (4) $19,616 that was received from the Internal Revenue Service as a result of the parties' filing joint income tax returns for the 2008 tax year and deposited directly into Paul's personal checking account; (5) $418 received from the Illinois Department of Revenue as a result of the parties' filing joint income tax returns for the 2008 tax year and also deposited directly into Paul's personal checking account; (6) funds spent on a 1992 Bass Tracker boat and equipment; (7) funds spent on the purchase of a 2006 Suzuki Boulevard motorcycle; (8) funds spent on airfare, hotels, meals, gifts, and other unknown purposes for or with Anneliese Moyer; (9) interest incurred as a result of Paul's making minimum payments on credit cards during the pendency of this matter; (10) late fees incurred as a result of Paul not making payments by the due date on credit cards during the pendency of this matter; and (11) money spent on other unknown purposes or given to others for unknown purposes.

¶ 10 Trial began on February 7, 2011, and continued for 15 days. At trial, Mary testified that Dr. Robert Kohn, a psychiatrist and a neurologist, diagnosed B.C. with pervasive developmental disorder when he was three and a half years old. At that time, B.C. was behaving in ways that

concerned Mary. For example, he would play with one toy for many hours, he would play alongside other children but not with them, and he seemed generally overwhelmed with other children. He was also very delayed with his gross and fine motor skills. At age four, B.C. was diagnosed with Asperger's syndrome. He was prescribed medication to increase his social skills and attention, as well as to lessen his anxiety and depression. Between ages four and five, Mary began taking B.C. to see Dr. Patricia Koltun, a psychologist, for behavioral therapy. At the time of trial B.C. was in the second grade and he was still under the care of both Drs. Kohn and Koltun.

¶ 11 Mary described other difficulties that B.C. experiences, including bedtime issues. Specifically, B.C. does not like to sleep alone, or to even be in a room by himself. Even with all the lights on, B.C. continually comes into Mary's bedroom at nighttime. B.C. also had trouble making friends and had been recently diagnosed with attention deficit hyper activity disorder (ADHD). Mary said that B.C. is on medication for his ADHD, but his attention is still very poor, and he has difficulty staying on task with things. He also displays symptoms associated with obsessive-compulsive disorder, including irrational fears.

¶ 12 Mary testified that she has volunteered for the last three years at B.C.'s school three to four days a week. She helps out with anything the school needs as far as preparing the class for projects or helping individual students with reading. She also runs the mail room at the school. She sees B.C. two times a week at school. According to Mary, her involvement for the last three years at B.C.'s school has been beneficial to B.C. because it has taught him boundaries – that she could be in the classroom and he can either work independently or work with her, and not have a hard time. Mary said that it was her understanding, based upon her knowledge of Asperger's syndrome, that the next few years into adolescence is critical for B.C.

¶ 13 Mary also testified about a relationship with her former boyfriend, John Minier. Mary said that she and John had known each other for several years before they began dating around May 2009. According to Mary, she and Minier broke up in September 2010. Although Mary dated Minier exclusively, Minier dated other women as well as Mary. While they were dating, they had dinner together a few times a week, went out with other couples, and spent birthdays together. They only spent one holiday together, Christmas Eve 2009. Mary and Minier also took Mary's son out on outings to see Santa and to the Brookfield Zoo. Mary testified that she and Minier spent the night together, either at her home or at his, between 10 and 13 times during their entire relationship. In September 2010 Minier accompanied Mary and her son and her son's friend on a vacation to Texas. Mary's father and stepmother also went on the vacation. Mary said that they did not sleep in the same bed on that trip. During the course of the vacation Mary and Minier decided not to date one another any longer. Mary and Minier also went on other trips to Wisconsin, but those trips were as part of a large group of people, not alone.

¶ 14 Mary testified that during the time she dated Minier she would use his car on occasion to transport her sick dogs to the veterinarian because Minier's car was older than hers and he allowed her to use it. Although Mary had given Minier her garage code when she asked him to pick up her son from the bus after school on one occasion, she testified that he did not come and go in and out of her home on a regular basis. On several occasions Mary was asked whether she engaged in sexual relations with Minier, and she responded each time by invoking her Fifth Amendment right against self-incrimination.

¶ 15 With regard to real estate, Mary testified that some time in 2007 she and Paul purchased a lot at 3208 Arbor Lane in Prairie Grove, Illinois. The purchase price for the lot was around

$240,000. After they purchased the lot, however, they later saw a house in a better location and less money a block from where they had purchased the lot. They spoke to the builder about their change of mind, and then entered into a contract to purchase the home instead.

¶ 16 Mary's counsel then moved to introduce respondent's exhibit 36. That exhibit was a general mutual release dated June 9, 2008, between the builder, Country Homes Builders, Inc., (builder) and Mary and Paul. Although the release does not give the date when Paul and Mary purchased the Arbor Lane lot, it does state that on February 20, 2008, the parties entered into a building contract for real property located at 4416 Woodland Hollow Trail, Prairie Grove, Illinois, and that two days later, on February 22, 2008, the parties entered into a contract where the builder would purchase the property at 3208 Arbor Lane from Paul and Mary. The release goes on to state that Paul and Mary are now unable to perform their obligation under the Woodland Hollow contract, and that pursuant to that contract, in the case of termination the builders retain the earnest money of $50,000 as liquidated damages. The release contains signatures purporting to be from the builder, Paul and Mary.

¶ 17 Mary's counsel then asked her if she believed that it was her signature affixed to the release, and Mary said that she did not believe it was her signature and it did not appear to be her signature. She said that prior to June 9, 2008, she and Paul talked about cancelling the contract with the builder. At that time, the Whitehall residence was for sale and they were two months away from moving into the house on Woodland Hollow Trail and B.C. was signed up for kindergarten at his new school. Mary asked Paul what he wanted to do about the contract and he said that he was not sure at that time. Mary said that in 2008, somewhere between Mother's Day and early June, Paul told Mary that he wanted to separate. At some point in June 2008 Paul told her that he had cancelled the contract.

Mary responded by saying that she supposed she did not have a choice, since he had already cancelled it.

¶ 18 Mary testified that Paul did not make timely payments on her credit card bills that the court had ordered him to pay. She said she had gotten several phone calls from the credit card companies asking for payment, and the monthly statements consistently showed a $35 late payment each month. With regard to Paul's purchases, Mary testified that to the best of her knowledge she did not know Paul owned a Suzuki motorcycle from the time she was married to Paul up until December 31, 2008. She also had no knowledge of Paul owning a Bass Tracker boat during that time.

¶ 19 During trial, Mary's counsel introduced respondent's exhibits 4(c) and 4(d) into evidence. Both exhibits contained typed lists with Paul's end-of-year pay stubs totals from the years 2010 and 2009, respectively, followed by various payroll deductions, the amount paid to Mary per court order and Paul's expenses from his financial affidavit. Exhibit 4(c) indicated that Paul's end-of-year pay stub amount was $824,215.75, and after all deductions were subtracted, an amount of $130,146.67 was listed as "dissipation/unexplained use of funds in 2010." Exhibit 4(d) indicated that Paul's end-of-year pay stub amount was $683,100.69, and after all deductions were subtracted, an amount of $152,387.22 was listed as "dissipation/unexplained use of funds in 2009."

¶ 20 Mary's former boyfriend, John Minier, testified that he only spent the night at Mary's home on a few occasions during their relationship. He also testified about allowing Mary to use his vehicle to transport her sick dogs to the veterinarian. He said that Mary may have pulled his vehicle into her garage when she was using it. He testified that he had worked out of Mary's house on a few occasions when he was doing her a favor like picking up her son from the bus or allowing her to use

his car. Minier said that when he and Mary would go out on dates they would alternate paying for meals out. They did not commingle funds and each maintained their own finances and household.

¶ 21 Janice Knuth, Paul's sister, testified that in September 2008 Paul co-signed a mortgage with her for the purchase of a home. Although Janice was married, her husband's name was not on the title. Janice acknowledged that she put down $8,242.10 in cash along with $1,500 in earnest money to purchase the house. Janice said that she borrowed between two and four thousand dollars from Paul in order to purchase the home. She claimed that she did not remember the exact amount that she borrowed from Paul, and there was no written evidence of what she borrowed. According to Janice, she paid Paul back the money he lent her in April or May 2009, after she received a tax refund. She did not remember if she repaid Paul with a check or not. When asked how she knew how much to pay Paul back if she could not remember how much he loaned her and she did not write it down, Janice answered that she "guesstimated." Janice also borrowed another $1,600 from Paul in December 2010 when she could not make her mortgage payment. She had not yet repaid Paul that amount.

¶ 22 Paul testified that he and Mary were having marital problems in early 2008 and began sleeping in separate bedrooms at that time. However, in the summer of 2008 he wanted to purchase the house on Crabtree Lane as an investment property. He asked Mary about purchasing the home, but she was not sure she wanted to do it. On August 8, 2008, without Mary's knowledge, Paul purchased the home on Crabtree Lane. At that time he was dating a woman named Anneliese Moyer.

¶ 23 When asked whether he recalled giving his sister a $10,000 down payment on her house, Paul denied giving her that mount. He said that he thought he gave her about three or four thousand

dollars when he co-signed the mortgage on her home. Like Janice, he could not recall the amount that he loaned her but he said that she paid him back when she got a tax refund the following spring. Paul also acknowledged giving Janice $1,600 for the December 2010 mortgage payment and that she had not yet repaid him that amount. Mary did not know that Paul was lending his sister money.

¶ 24 Paul also testified that he loaned his parents $6,000 in 2008 or 2009 before they closed on a house. Paul said that his parents paid him back that amount. Mary also was not aware of this loan. He also loaned his girlfriend, Anneliese Moyer, $5,000 about a year and a half before trial. She has paid him $2,000 back. Again, Mary was not aware of this loan.

¶ 25 With regard to taxes, Paul testified that for the year 2008 he received both federal and state tax refunds. The federal refund was $19,616 and the state refund was $418. He also received federal and state tax refunds for the year 2009. The federal refund was $14,646, and the state refund was $1,144. Paul deposited the state and federal tax refunds for both years into his personal checking account.

¶ 26 On cross-examination, Paul testified that he paid two of Mary's Citibank credit cards pursuant to court order. One card had a balance of around $19,000. Paul said that he paid between $700 and $800 per month on that card, and that the minimum payment was "six hundred something." The total amount owed on those cards as of the time he filed his financial affidavit was $22,472. Paul admitted that there had been late charges on both cards for his failure to pay them on time, but the fees were never above $30. With regard to the parties' IRA, Paul testified that the IRA was worth $91,000 and he cashed it out in October 2009 and put the funds in his personal checking account. He said that $30,000 of the funds went to pay Mary's legal bills and that he used the remainder to pay bills.

¶ 27 Paul also testified that during the course of the trial he purchased a 2011 Camaro convertible. The vehicle cost around $44,000. He traded in his 2007 Lotus, which had a balance due of $9,500, and financed the remaining cost of the vehicle, around $24,000. He put no money down on the transaction.

¶ 28 Paul's financial affidavit was entered into evidence as petitioner's exhibit 1. In it, he listed his liabilities as of January 28, 2011, as follows:

"STATEMENT OF LIABILITIES:

Creditor's Name	Payment For	Balance Due
Hinsdale Bank	Lotus	$10,452
Home State Bank	lot loan	$220,000
North Shore Bank	Trailer - WS	$22,472
Bank of the West	RV	$176,117
Citibank CC	Mary's credit card	$19,775
Citibank CC	Mary's credit card	$5,868
Best Buy CC	Paul's purchases	$3,000
McHenry County	lot taxes	$350 (monthly)
Flagstar Bank	sister's home	$167,785[1]
Chase	1st mort. Crabtree	$395,000
Chase	tax escrow Crabtree	$915.52 (monthly)
1st Merit Bank	Unsecured loan for defaulted home purchase	$40,000

[1]Paul noted that he made no payments on this debt because his sister pays it.

McHenry County	Whitehall taxes	$717 (monthly)
Barclay's CC	Paul's purchases	$13,548
1st Merit Bank	2nd mort. Crabtree	$74,100
TOTAL LIABILITIES:		$1,148,117

¶ 29 In the "statement of assets" section Paul listed the Crabtree and Whitehall residences and the lot on Arbor Lane. He listed the combined market value of these properties as $1,005,000 and the debt associated with them as $1,097,100. Under the section entitled "cars and other personal property" Paul listed six items and the debt associated with each item: (1) 2006 Suzuki motorcycle ($0); (2) 2007 Lotus ($10,452); (3) 1995 Jeep ($0); (4) RV-2007 Fleetwood ($176,117); (5) Trailer-WS ($22,472); and (6) Bass boat ($2,500). The total debt listed on these vehicles was $211,541, which exceeded the listed market value of these items by $28,046. In the "financial assets/cash or cash equivalent" section, Paul listed a total of $19,300 in assets. Under "retirement/deferred compensation" the market value was listed as "$0." Likewise, under the section "investment accounts and securities" the market value was listed as "$0." His gross income from all sources in 2010 was listed as $824,215.75.

¶ 30 At the close of Paul's case, he filed a motion for directed finding regarding termination of maintenance based on Mary's alleged cohabitation with another man. The trial court denied the motion and held that Paul did not meet the burden of proof required to sustain his claim that Mary was cohabitating on a resident, continuing conjugal basis with another individual. Final arguments were heard on April 25, 2011.

¶ 31 On May 5, 2011, Mary filed a petition for contribution of her attorney's fees and costs. In her petition, she noted that in May 2009, she paid her attorneys an initial retainer of $3,000 and

made payments to them of $2,500.33 in November 2010 and $4,000 in December 2010. She also noted that on November 23, 2009, the trial court awarded interim attorneys' fees and costs of $30,000 to be paid by Paul to her attorneys. Mary then requested that the trial court order Paul to pay the remaining unpaid fees and costs that she incurred in this matter – $93,936.28 in fees and $6,500.30 in costs, plus any additional fees and costs that she may incur prior to the conclusion of this matter.

¶ 32 On May 25, 2011, the trial court entered a Judgment for Dissolution of Marriage. Among other orders, the judgment provided the following: (1) Paul's net income per year was $461,537.98, and he was ordered to pay Mary $1,775.15 per week for the support of B.C.; (2) Mary was awarded $1,772.87 per week for rehabilitative maintenance until December 31, 2016, and reviewable thereafter; (3) Paul dissipated $400,982 in marital assets; (4) the house on Whitehall Lane was awarded to Mary, along with the first and second mortgages, real estate taxes and insurance on that property; (5) the house on Crabtree Lane was awarded to Paul, along with the first and second mortgages, taxes and insurance on that property; (6) Paul was awarded all the personal property, furniture and furnishings at the Crabtree house; (7) the lot on Arbor Lane was awarded to Paul, along with the mortgages, taxes, insurance and any other expenses related to the property; and (7) Paul was awarded the Fleetwood RV, the Breckenridge trailer, the Suzuki motorcycle, the Bass boat, and the 2011 Chevrolet Camaro.

¶ 33 With regard to the Whitehall property the trial court's order read, in pertinent part:

> "That as to the real property at 4261 Whitehall Lane, Algonguin, Illinois, 60102, the combined first and second mortgages exceed the fair market value of the property. Respondent cannot refinance under those circumstances. Petitioner shall quit-claim

his interest in said residence to Respondent without requiring her to refinance. Respondent shall be responsible for payment of the first and second mortgages, *real estate taxes, and insurance, and shall hold Petitioner harmless and indemnify him thereon. *** Taxes and insurance will be prorated between the parties as of entry of this order except as may already have been covered in a temporary support order in this case which set forth an obligation to make a payment."*

¶ 34 With regard to the finding of dissipation, the trial court made the following findings:

"Q) That as to the issue of dissipation, the marriage between the parties was irretrievably broken on or about June 28, 2008, even though the parties physically separated on December 31, 2008. The Petitioner has dissipated marital assets which are primarily funds. Bother [*sic*] parties have dissipated marital assets (funds) by not using them for marital purposes. Both parties have made a preliminary showing of dissipation. Respondent has presented sufficient evidence to warrant no finding of dissipation against her. Petitioner on the other hand has spent the assets of the parties to the point there is no equity left in the marital estate. He has a large income which he has spent freely. He has borrowed freely, reducing the parties' equities to zero. Even as the case was being tried, he was spending with impunity and indifference. For all practical purposes only his large income saved the parties from bankruptcy. His attitude seems to be 'I earned it and I'll spend it' no matter what the consequences. The parties' overall asset to debt ratio would not be as bad as it is but for this unexplained spending. Respondent had made a preliminary showing of dissipation and thereby has shifted the burden to Petitioner herein. The burden on

the Petitioner to refute the allegations of dissipation is by clear and convincing evidence and Petitioner, as to some dissipation, has failed to adequately refute the accusation by clear and convincing evidence and has failed to provide specific evidence with respect to identifying possible legitimate expenses since the time of the irretrievable breakdown of the marital relationship. As Petitioner has not met the burden required to refute Respondent's allegations as to some of the dissipation, the Court hereby makes the following findings with respect to specific items of dissipation:

(a) 2009 dissipation/unexplained use of funds $152,000.00;

(b) 2010 dissipation/unexplained use of funds $130,000.00;

(c) 2300 Crabtree $27,000.00;

(d) 2008 Federal Tax Refund $14,646.00;

(e) 2008 State Tax Refund $1,114.00;

(f) 2011 Camaro $14,000.00;

(g) 2007 Lotus $24,000.00;

(h) Suzuki Motorcycle $6,000.00;

(i) Bass Boat $2,500.00;

(j) Charge Card Interest $12,122.00;

(k) Annelise Moyer $5,000.00;

(l) Parents $6,000.00; and

(m) Sister $6,600.00.

> The total of the dissipation by Petitioner is $400,982.00 attributable to him since June 1, 2008 through the close of proof in this trial. Petitioner owes Respondent $200,491.00. As previously noted there are no marital assets from which this can be paid. A judgment should be entered against the Petitioner and in favor of the Respondent for $200,491.00. This should be paid by the Petitioner together with statutory interest of 9% per annum at a rate of $4,845.20 per month of principle [*sic*] and interest for a period of 60 months or until the judgment is paid in full whichever comes first."

¶ 35 On July 13, 2011, the trial court denied Mary's petition for attorney's fees and costs and noted that the denial was based upon the divisions that it had already done. On August 11, 2011, Paul filed a motion to modify the judgment. In that motion, Paul asked the trial court to clarify the portion of the final judgment order pertaining to the proration of taxes and insurance on the Whitehall property. On September 28, 2011, the trial court modified the final order and stated, "[p]etitioner Paul Claps, shall be responsible for the payment of the real estate taxes and insurance on 4261 Whitehall Lane, Algonguin, Illinois property through May 25, 2011."

¶ 36 II. ANALYSIS

¶ 37 A. Paul's Appeal

¶ 38 1. Dissipation of Marital Assets

¶ 39 On appeal, Paul argues that the trial court's finding that he dissipated $400,982 in marital funds was against the manifest weight of the evidence. Paul breaks up this argument into four subparts and argues that the dissipation ruling was error because: (1) he accounted for his expenditures by clear and convincing evidence and thereby rebutted Mary's claim of dissipation; (2)

an asset subject to distribution cannot constitute dissipation; (3) the calculations relied on by the trial court were not accurate; and (4) the trial court failed to consider the economic conditions upon the marital estate.

¶ 40 Section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) pertains to the dissolution of property between the parties. 750 ILCS 5/503 (West 2010). In allocating property pursuant to section 503 of the Act, the trial court must consider any dissipation by the parties. 720 ILCS 5/503(d)(2) (West 2010). Dissipation has been defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown. *In re Marriage of D'Attomo*, 2012 IL App (1st) 111670, ¶ 36. The person charged with dissipation bears the burden of establishing by clear and convincing evidence how the funds were spent. *Id*. Whether dissipation has occurred is a question of fact to be determined by the trial court and such a determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 86. A factual determination will be found to be against the manifest weight of the evidence only when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence. *Id*.

¶ 41 a. Dissipation Refuted by Clear and Convincing Evidence

¶ 42 Paul first contends that the trial court's finding that he dissipated $327,400 in marital funds was against the manifest weight of the evidence because he refuted this claim by clear and convincing evidence when he offered extensive testimony at trial to explain the expenses he incurred during the time his marriage to Mary was undergoing an irretrievable breakdown. He also claims that the trial court erroneously required him to provide documentary evidence when it held in the

final judgment order that he "had failed to adequately refute the accusations by clear and convincing evidence and has failed to provide specific evidence with respect to identifying possible legitimate expenses ***."

¶ 43 We initially note that Paul erroneously claims that the trial court found that he dissipated $327,400 in marital assets when the total dissipation amount was $400,982, a figure that he correctly cites in other parts of his brief.

¶ 44 In support of his claim that he offered extensive testimony to explain the expenses that he incurred during the time the marriage was undergoing an irretrievable breakdown, Paul created a table in his brief which contains a list of 25 expenditures, for example, "Costco," "Best Buy" and "Woodland Landscaping." On one side of that expenditure he listed the amount spent, and on the other side of the expenditure he listed the record cite where the testimony he referred to can be found. Paul then argues "[p]etitioner herein gave more than general and vague statements about expenditures and, in fact, Petitioner itemized the income he received and the expenditures during the time the marriage was experiencing an irretrievable breakdown in great detail." As support for this claim Paul then string cites to 967 pages of record testimony, along with several exhibits.

¶ 45 Pursuant to Supreme Court Rule 341(h)(7), an appellant's brief must contain argument, "which shall contain the contentions of the appellant *and the reasons therefor,* with citation of the authorities and the pages of the record relied on." (Emphasis added.) Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). The appellate court is not a depository into which the appellant may dump the burden of argument and research. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38.

¶ 46 Paul has forfeited his claim that the expenditures listed in his table did not constitute dissipation by failing to comply with Illinois Supreme Court 341(h)(7) (eff. Feb. 6, 2013). Instead

of supplying the reasons for his contentions as required by Rule 341, Paul instead simply refers this court to almost 1,000 pages of the record to make his point. He does not summarize the testimony that he gave at trial regarding these expenditures. Even more important, he does not explain how those expenditures relate to the 13 distinct findings of dissipation listed in the trial court's order. Paul has chosen to dump the burden of his argument upon this court, and he has therefore forfeited it.

¶ 47 Within this argument Paul references two specific findings of dissipation and offers reasons why such findings were in error. Specifically, he argues that the trial court erred in finding that he dissipated: (1) $12,122 in charge card interest; and (2) $17,600 in private loans to his girlfriend, parents, and sister. Paul has sufficiently supported these claims with argument and citation to the record, and therefore we will review them on their merits.

¶ 48 With regard to the charge card interest, Paul argues that the trial court did not indicate how it arrived at $12,122 as the amount that he dissipated. He contends that the evidence at trial revealed that one of Mary's credit cards that he was paying for pursuant to court order had a balance of $19,775. Paul then speculates that if the trial court included the interest associated with Mary's expenditures as part of all the interest charged against him, that method of accounting would be error, especially since those expenditures were incurred prior to the breakdown of the marriage.

¶ 49 A review of the record indicates that Paul was ordered to pay *two* of Mary's charge cards, with a total balance of $22,472, as of the date he filed his financial affidavit. Also, Mary testified that Paul was consistently late on paying those bills and $35 per month late fees were imposed on a regular basis. Further, on cross-examination, Paul admitted that he was making only slightly above the minimum payments on those cards and that late fees had been assessed on them. Given these

facts, it would not be unreasonable for the trial court to find Paul's consistent failure to pay the charge cards on their due date, coupled with his decision to make slightly more than the minimum payment on the cards, to constitute dissipation. Although we agree that the trial court did not list its computations as to how it arrived at this dissipation amount, it was not required to do so. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007) (trial court is not required to list what conduct constituted dissipation and how it arrived at a particular dollar amount). Based upon our review of the record, we find sufficient evidence existed to support the trial court's finding with regard the dissipation of marital funds through credit card interest. Accordingly, we find no error.

¶ 50 Paul also argues that the trial court erred in finding that the had dissipated $17,600 in marital assets when he loaned his girlfriend $5,000, his parents $6,000, and his sister $6,600. Paul contends that he testified that all but $4,600 of these loans were paid back and Mary did not rebut his testimony.

¶ 51 We find no error. First, simply because Mary did not rebut Paul's testimony that some of these loans had been paid back does not mean that the trial court was required to accept Paul's testimony at face value. It is more likely that the trial court viewed Paul's testimony as less than credible. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) (when the manifest weight standard applies, the reviewing court will not substitute its judgment for that of the trial court on matters of witness credibility.) Paul's testimony about these loans, as well as his sister's testimony about Paul's loan to her to purchase a home, is highly suspect. Neither Paul nor Janice could remember how much money Paul lent her. Instead, they could only testify about a range of possibilities, from $2,000 to $4,000 dollars. Further, Janice's testimony that she "guesstimated" the amount she owed

Paul when she paid him back because she could not remember how much she owed him does not ring true. It is entirely possible that the trial court believed that more than $4,000 of Paul's money was used as part of the almost $10,000 down payment on Janice's house. With regard to credibility, we find the same to be true of Paul's testimony about the loans to his parents and to his girlfriend. Accordingly, we find no error regarding these findings of dissipation.

¶ 52 We are also not persuaded by Paul's argument that the trial court required him to provide documentation in order to rebut Mary's claim of dissipation. We do not construe the trial court's comment that Paul had "failed to provide specific evidence with respect to identifying possible legitimate expenses" to mean that the court required *documentary* evidence. Instead, such "specific evidence" could have been provided through Paul's testimony. Accordingly, we find no error in the trial court's comments.

¶ 53 Finally, Paul argues that a review of Mary's testimony reveals that *she* did not testify with clear and specific evidence as to her expenditures. We will not address this claim because the issue of whether Mary dissipated marital assets is not a part of this appeal.

¶ 54 b. Classification of Marital Assets

¶ 55 Next, Paul argues that the trial court's classification of certain marital assets as dissipation was against the manifest weight of the evidence. Specifically, he claims that the transfer of one marital asset to another marital asset cannot constitute dissipation. Therefore, he asserts, the trial court erred in awarding certain marital assets to him and at the same time finding that those assets constituted dissipation. Specifically, Paul refers to the following marital assets and their dissipation amounts: (1) the Crabtree home ($27,000); (2) the 2011 Camaro automobile ($14,000); (3) the 2007 Lotus automobile ($24,000); (4) the Suzuki motorcycle ($6,000); and (5) the bass boat ($2,500). As

support for this contention Paul cites to *In re Marriage of Miller*, 342 Ill. App. 3d 988 (2003) and *Hellwig v. Hellwig*, 100 Ill. App. 3d 452 (1981).

¶ 56 In response, Mary notes that the trial court is required to consider dissipation in arriving at an equitable property division. 750 ILCS 5/503(d)(2) (West 2010). Further, Mary argues that each of the items that Paul claims did not constitute dissipation were items that he purchased for his sole use and enjoyment, including the Crabtree house that Mary did not even know Paul was purchasing as their marriage was breaking down. Mary points to the trial court's holding that Paul spent the assets of the parties to the point where there was no equity left in the marital estate, and based upon that fact, the trial court had no alternative but to order Paul to reimburse the marital estate for his wasteful, non-marital expenditures.

¶ 57 Paul responds to Mary's argument by claiming that since Mary only cited to the Act and no other case law or relevant authority this court should disregard her argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Policeman's Benevolent Labor Committee v. County of Kane*, 2012 IL App (2d) 110993, ¶ 20 (the rule that a brief contain argument supported by citation to authority and the record applies to appellees as well as appellants).

¶ 58 Mary has not forfeited her response to this claim simply because she did not cite any case law in response to Paul's argument. Mary has both cited to the Act and supported her position with sufficient argument and therefore we will not disregard her contentions. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 59 Here, the trial court did not err in classifying certain marital assets as dissipation. We agree with Mary and the trial court that Paul purchased these items for his sole use and enjoyment during the breakdown of his marriage to Mary. Although Paul earns a very high income, there was no

equity left in the marital estate due to his spending with impunity. For us to hold that a transfer of one marital asset to another marital asset can never constitute dissipation would prevent the trial court from equitably distributing the marital estate and allow spouses to do exactly as Paul has done here – use up all the marital estate by purchasing material items that only he would enjoy, and then forcing the other spouse to either take half of them or nothing at all. Such a ruling would make a mockery of the trial court's duty to equitably distribute the marital assets. The cases that Paul cites do not persuade us otherwise.

¶ 60 In *In re Marriage of Miller*, 342 Ill. App. 3d 988 (2003), the husband quit his medical practice after the marital breakdown based upon numerous factors which were corroborated at trial, including the stress of a divorce that took four years to complete, an alcoholic spouse, and the care of the parties' three sons. During that time, however, the husband engaged in day trading and initially made more money than he did practicing medicine. The trial court found that the husband had dissipated a majority of the marital estate by giving up his medical practice and he was therefore awarded a share of the estate that had less value than the debt he was ordered to assume, while the wife was awarded $1.6 million in unencumbered assets. *Id*. at 989. On appeal, the trial court's ruling that the husband had dissipated marital property by giving up his practice was reversed. The *Miller* court also reversed the trial court's finding that purchases of furniture, a ski boat, computer, tractor and utility trailer did not constitute dissipation because the items were valued at cost and distributed to the husband as his part of the marital estate. *Id*. at 996. In so ruling, it held that the transfer of one marital asset to another marital asset was not dissipation, citing *In re Marriage of Hellwig*, 100 Ill. App. 3d 452, 464 (1981). *Miller*, 342 Ill. App. 3d at 996.

¶ 61 In *Hellwig*, the trial court found a transfer of a vacant lot by the husband was dissipation. *Hellwig*, 100 Ill. App. 3d at 464. In reversing this finding of dissipation, the *Hellwig* court noted that there was conflicting testimony as to whether the husband even had an interest in the lot, but found that even if he were deemed to have an interest, such interest was merely transferred to another company owned by him, which was also a marital asset. Therefore, no dissipation occurred. *Id.*

¶ 62 We initially note that the *Miller* court was incorrect when it cited to *Hellwig* for the proposition that the transfer of one marital asset to another marital asset is not dissipation. See *Miller*, 342 Ill. App. 3d at 996. The *Hellwig* court never made such a pronouncement, and the *Miller* court did not add a "see" cite before that proposition of law when citing to *Hellwig*. The *Hellwig* court was simply stating the obvious – that even if the husband had an interest in the vacant lot, that lot was simply transferred to another marital asset and therefore it was subject to division in the dissolution proceedings. It would be absurd to take that statement to mean that any time a marital asset, *i.e.,* money, is transferred to another marital asset, *i.e.,* an item purchased, no dissipation can ever occur. Even in the *Miller* case, the items the husband purchased could be awarded to him and the value of those purchases could still be offset by an in-kind award to the wife since there was equity left in the estate. In stark contrast, the instant case presents the extreme example of where a spouse has squandered the marital assets by either purchasing items for his sole use and enjoyment or trading in marital assets which had value, like the Lotus, for another vehicle, the 2011 Camaro, also for his sole use and enjoyment, at a time when the marriage was undergoing an irreconcilable breakdown. This gross dissipation left nothing of the marital estate to be awarded to the wife except for the material goods he purchased for himself. As the *Hellwig* court held, "[d]issipation *may be found* where the spouse uses marital property for his own benefit and for a purpose unrelated to the

marriage at a time at which such marriage is undergoing an irreconcilable breakdown." (Emphasis added.) *Hellwig*, 100 Ill. App. 3d at 462. This is exactly what occurred here. Accordingly, the trial court did not err in awarding these assets to Paul and at the same time holding that those assets constituted dissipation.

¶ 63 c. Method of Accounting

¶ 64 Paul next argues that the method of accounting used by the trial court was erroneous and therefore the amount of dissipation set by the trial court should be reversed. Specifically, Paul states that the trial court did not explain how it arrived at a dissipation figure of $152,000 for the year 2009 and $130,000 for the year 2010. Paul assumes the trial court used the figures contained in Mary's exhibits 4(c) and 4(d) ,which contain very similar dissipation amounts. However, Paul contends that Mary inflated his gross earnings in those exhibits (from $664,241 to $683,100.69 in 2009, and from $768,242.23 to $824,215.75 in 2010). Paul contends that the trial court erred in not relying on the amounts listed on his W-2s, which were prepared by his employer's accountant and which Paul used to file his taxes for those years. Paul claims that on cross-examination by Mary's attorney, he attempted to explain all the deductions and business costs that were deducted from his earnings, and that Mary did not include many of those costs in her exhibits.

¶ 65 In response, Mary contends that at trial, her counsel spent nearly two days cross-examining Paul and demonstrating to the court that many of the deductions he claimed from his gross wages were voluntary contributions and payments that he made to or on behalf of others. For example, Mary contends that Paul voluntarily agreed to be responsible for the salary of his father, his girlfriend, and another employee. Mary argues that these expenses were not for marital purposes, and the trial court properly considered this testimony in finding that Paul dissipated $152,000 in

2009 and $130,000 in 2010 by expending those funds without a valid explanation that they were used for marital purposes.

¶ 66 In his reply brief, Paul addresses the issue of other people's salaries being deducted from his gross pay for the first time and states, "[t]he trial record is clear and the evidence unrebutted that the agreement between Petitioner and his employer for fifteen (15) years was that any cost that has to do with accounts that Petitioner maintains, including the cost of the salaries of employees that work on Petitioner's accounts, comes off the gross profit as a cost of doing business."

¶ 67 We initially note that although Paul argues here that Mary inflated his gross earnings in her exhibits for both 2009 and 2010, that the figure Mary used as Paul's gross pay for 2010 is the same figure that Paul listed on his financial affidavit for the year 2010, $824,215.75. More important, like the first subpart of his dissipation argument, Paul has forfeited this claim. In his opening brief, Paul states "[p]etitioner attempted to explain what all the deductions and business costs were deducted from his earnings." After this sentence, Paul cites to 116 pages of the record, without summarizing any testimony regarding why such deductions were valid, with the exception of a few sentences regarding credit card usage fees. Paul does not discuss anything about being responsible for other people's salaries, or give any other information about the two days' worth of testimony he provided on this topic. The first time that Paul acknowledges this issue is in his reply brief, when he makes a general statement that the "record was clear" and the "evidence unrebutted" that any costs related to his accounts came off the gross profits as a cost of doing business. Paul has not provided this court with specific arguments *and the reasons therefore* to support the issue of improper calculation. Accordingly, he has forfeited review of it. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 68 d. The Effect of the Economic Conditions on the Value of the Marital Estate

¶ 69 Finally, Paul argues that the trial court erred in not considering the economic conditions upon the value of the marital estate. Specifically, Paul takes issue with the trial court's comment in the final judgment order that he "*** has spent the assets of the parties to the point there is no equity left in the marital estate ***. He has borrowed freely, reducing the parties' equities to zero." Paul claims that the current economic market caused the reduction in value of the marital estate and it was therefore error for the trial court to blame him for all the loss of equity to the marital estate.

¶ 70 We are not persuaded. With regard to the economy, even if the market had been more stable and the parties' properties had increased values, we are not convinced that Paul would not have borrowed to the fullest extent of whatever capacity the property would further support. Whether the trial court considered the economic conditions on the marital estate or not, it is clear from a review of the entire record that the parties' financial mess was primarily a product of Paul's gross overspending of the estate's assets combined with his reckless borrowing habits. For example, in his financial affidavit he listed his gross income in 2010 as $824,215.75. However, even with this very high salary he only claimed to possess $19,300 in financial assets, with no retirement or investment accounts. Accordingly, we find no error.

¶ 71 2. Child Support

¶ 72 Next, Paul argues that the trial court abused its discretion in awarding Mary statutory child support for B.C. Specifically, Paul argues that it was error for the trial court to deny his request for a downward deviation from the statutory child support guidelines and require him to pay Mary $1,775.15 per week as child support for B.C. when: (1) Mary's financial affidavit listed B.C.'s expenses as only $1,967 per month; (2) the standard of living that B.C. enjoyed during the marriage did not require such a high amount of support after its dissolution; (3) he is a high-wage earner, and

the statutory child support amount was therefore a "beginning point" for the trial court to start its analysis of the amount of support needed to maintain the lifestyle that B.C. would have enjoyed had the parties not divorced; and (4) the trial court did not consider any of the relevant factors in awarding a "windfall" to Mary in child support. Paul also notes that during the course of the dissolution proceedings, Mary was able to save $14,000. As support for his contentions, Paul cites to *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 561 (1990) and *In re Marriage of Lee*, 246 Ill App. 3d 628, 644 (1993).

¶ 73 In response, Mary contends that the trial court did not abuse its discretion in awarding her statutory child support for B.C. Specifically, she argues that at trial, she testified extensively about B.C.'s special needs, including his diagnosis of Asperger's Syndrome. Further, although she admits that during the course of the dissolution proceedings she was able to save $14,000, she testified at trial that during the time she was saving this amount her credit card balances also went up around that same amount. Finally, Mary argues that although her financial affidavit only listed B.C.'s expenses as $1,967 monthly, that amount was merely the total of the subcategories listed on the standard financial affidavit form and did not take into account other necessary expenses for B.C.'s care, including mortgage, utilities, food, and transportation expenses.

¶ 74 Section 505(a)(1) of the Act establishes guidelines to determine the minimum amount of child support to be paid by the noncustodial parent. *In re Keon C.*, 344 Ill. App. 3d 1137, 1141 (2003); 750 ILCS 5/505(a)(1) (West 2010)). Section 505(a) of the Act creates a rebuttable presumption that a specified percentage of a noncustodial parent's income represents an appropriate child support award. *Id.* at 1141. In the case of one child, the minimum amount of support is 20 percent of the supporting parent's net income. 750 ILCS 5/505(a)(1) (West 2010).

¶ 75 The trial court shall award the statutory guideline amount of support unless the court: (1) makes a finding, after considering the best interests of the child, that the application of the guidelines would be inappropriate; (2) states the amount of support that would have been required under the guidelines, if determinable; and (3) indicates the reason for the variance from the guidelines. 750 ILCS 5/505(a)(2) (West 2010)); *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37. When dealing with a parent who has a high income, the trial court must balance the concern that the child support award should not be a windfall against a concern for the standard of living that the child would have enjoyed absent the parental separation and the dissolution. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 347 (1996). Child support is a matter within the sound discretion of the trial court, and this court will not disturb the trial court's determination absent an abuse of discretion. *Id.*

¶ 76 Based upon our review of the record we do not find that the trial court abused its discretion in awarding Mary statutory child support for B.C. First, Paul's argument that the fact that Mary was able to save $14,000 during the dissolution proceedings is evidence that the child support award was too high is meritless. Paul has presented no evidence to show that Mary's savings were derived from her temporary child support payments that she received during the dissolution proceedings. Further, Mary testified that while she saved this amount her credit card balances also went up approximately the same amount during that time.

¶ 77 Second, Paul is incorrect that since he is a high wager earner, the statutory child support was a "beginning point" for the trial court to commence its analysis regarding the amount of support that B.C. needed. The Act is clear that the trial court *shall* award guideline child support *unless* the court makes findings otherwise, states the amount that would have been applied under the statutory

guidelines, and indicates the reason for the variance. See 750 ILCS 5/505(a)(2) (West 2010). Here, the trial court declined Paul's request for a downward deviation in support and made no such findings. Further, Paul cites no authority for the proposition that a trial court is required to award child support below the guideline amount simply because he is a high wage earner.

¶ 78 We agree with Mary that the expenses listed on her financial affidavit did not take into account other large expenses such as mortgage, utilities, etc. However, even taking those amounts into account, the award of statutory child support here is a substantial amount of money. However, given the evidence presented at trial about B.C.'s mental health issues and his special needs, that amount seems less likely to be a "windfall" to Mary than an amount appropriate to ensure the proper care of B.C. until he reaches adulthood. Further, the cases cited by Paul do not persuade us otherwise.

¶ 79 Paul characterizes *In re Marriage of Lee*, 246 Ill. App. 3d 628 (1993), as a case where the reviewing court affirmed the trial court's downward deviation from the child support guidelines even though the father earned a high income and the mother's annual income was less than $20,000. However, in that case it was the father who appealed the child support award and argued that, although the trial court properly deviated downward from the statutory support amount, it should have done so even farther (the award was $3,000 per month and 20 percent of the father's net pay was between $3,920.36 and $5,439.78 monthly). In affirming the $3,000 per month award to the mother, the court specifically relied on the mother's low salary and the fact that the child had a respiratory disorder and required a "breathing machine." *Id.* at 644.

¶ 80 In reducing the child support award in *In re Marriage of Scafuri*, 203 Ill. App. 3d 385 (1990), the reviewing court was concerned that the trial court was trying to improperly supplement the wife's

maintenance with the child support award based upon the trial court's detailed comments about the wife's salary and how small it was in proportion to the husband's salary. *Id*. at 392-93. The law is clear that when dealing with above-average incomes, the specific facts of each case become more critical in determining whether the guidelines should be adhered to. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 36 (1997). Given the detailed evidence presented at trial regarding B.C.'s mental health challenges, we cannot say that an award of statutory child support was an abuse of discretion.

¶ 81 3. Motion for a Directed Finding to Terminate Maintenance

¶ 82 Next, Paul argues that the trial court erred in denying his petition to terminate maintenance. 750 ILCS 5/510(c) (West 2010). Specifically, he argues that the trial court's order that Mary was not cohabiting with John Minier on a resident, continuing, conjugal basis was against the manifest weight of the evidence. As support for this contention, Paul claims that the facts of this case are similar to the facts in *In re Marriage of Susan*, 367 Ill. App. 3d 926 (2006), wherein this court upheld the trial court's order terminating maintenance after it found a *de facto* marriage between the wife and another man. He also relies on *In re Marriage of Frasco*, 265 Ill. App. 3d 171 (1994), and *In re Marriage of Herrin*, 262 Ill. App. 3d 573 (1994), as factually similar to the instant case.

¶ 83 Section 510(c) of the Act provides, in pertinent part, that "the obligation to pay future maintenance is terminated *** if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis." 750 ILCS 5/510(c) (West 2010). "The rationale behind termination of maintenance when resident, continuing, conjugal cohabitation exists is the inequity created when the ex-spouse receiving maintenance becomes involved in a husband-and-wife relationship but does not legally formalize it, with the result that he or she can continue to receive

maintenance." *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929 (2006) (quoting *In re Marriage of Herrin*, 262 Ill. App. 3d 573, 577 (1994)). The burden is on the party seeking the termination of maintenance to prove that the ex-spouse receiving maintenance is involved in a *de facto* husband and wife relationship with a third party. *Id*. In determining whether that burden has been met, courts look to the totality of the circumstances and consider the following factors: "(1) the length of the relationship; (2) the amount of time the couple spends together; (3) the nature of activities engaged in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together." *Id*. at 929-930 (quoting *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 189 (2004)). Every case in which a termination of maintenance is sought presents a unique set of facts (*In re Marriage of Bates*, 212 Ill. 2d 489, 524 (2004)) and no two cases will be alike because no two personal relationships are alike. *In re Marriage of Sappington*, 106 Ill. 2d 456, 466 (1985). A reviewing court will not overturn a trial court's ruling on a petition to terminate maintenance unless it is contrary to the manifest weight of the evidence. *Id*. at 469.

¶ 84 We have reviewed this court's opinion in *In re Marriage of Susan*, 367 Ill. App. 3d 926 (2006), and we disagree with Paul that the facts of that case are similar to the instant case. The *Susan* court summarized the facts as follows:

> "Under the facts in this case, there can be little question that the trial court's finding of a *de facto* marriage was not against the manifest weight of the evidence. Respondent and [wife's boyfriend] had been together for over three years at the time of the hearing, and the evidence demonstrated that they spent nearly every night together during their relationship. The evidence also showed that the two took many trips together and spent virtually all holidays together. In fact, the only factor from the above list that weighs against the trial

court's finding is the fourth factor: the evidence indicated that respondent and [wife's boyfriend] did not commingle funds or provide each other with monetary support." *Id*. at 930.

¶ 85 Here, the evidence presented at trial was not nearly as conclusive as that established in *Susan*. Instead of taking many trips together as a couple or spending virtually all holidays together, Mary and Minier went on *one* vacation together and spent *one* holiday together in the 18 months that they dated. They also did not spend almost every night together. Mary testified that she and Minier spent between 10 and 13 nights together during the time that they dated. Although Minier had the garage code to Mary's house, Mary testified that he was given the code to get into her house with B.C. after Minier picked up the child from the bus on one occasion, but Minier did not "come and go" to and from Mary's home whenever he wished. Although Minier's car was parked in Mary's garage on occasion, both Mary and Minier testified that Mary often borrowed Minier's car to transport her sick dogs to the veterinarian. Further, Mary and Miner did not commingle money or provide each other with monetary support. Although they had dinner together a couple of times per week, went to parties together, and took B.C. to various events, such evidence only indicates a dating relationship, not a *de facto* marriage.

¶ 86 Paul also argues that a negative inference should have been drawn when Mary asserted her Fifth Amendment privilege during her testimony when asked about her sexual relationship with Minier. Specifically, he contends:

"this Court should not allow [Mary] to hide behind the Fifth Amendment privilege and then use that privilege to support her claim that she was not involved in a *de facto* marriage with Mr. Minier. It is reasonable to infer that a sexual relationship did exist

> between Mr. Minier and [Mary]. As stated in *In re Marriage of Sappington*, finding '***direct evidence of intercourse and its frequency will seldom be available. Consequently, circumstantial evidence and reasonable inferences must play an important role in this type of termination case.'"

¶ 87 We are not persuaded. First, Mary was entitled to invoke her Fifth Amendment right against self-incrimination when asked whether she was engaged in a sexual relationship with Minier since answering that question in the affirmative would constitute an admission that she committed adultery, which is a crime in Illinois punishable by up to 364 days of imprisonment. See U.S. Const., amend V; 720 ILCS 5/11-35 (West 2010); 730 ILCS 5/5-4.5-55 (West 2010). Second, Paul mischaracterizes *In re Marriage of Sappington*, 106 Ill. 2d 456 (1985). The quote that Paul attributes to the supreme court in *Sappington* was actually a quote from *In re Support of Halford*, 70 Ill. App. 3d 609, 613-14 (1979), which the *Sappington* court referred to in its discussion of the meaning of the word "conjugal" in the Act. *Sappington*, 106 Ill. 2d at 465. The holding in *Sappington* actually works against Paul's "negative inference" argument, since our supreme court held in that case that an impotent man could be engaged in a "conjugal" relationship without being involved in a sexual relationship. *Sappington*, 106 Ill. 2d at 468. Third, even if we were to draw a negative inference from Mary's decision to invoke her Fifth Amendment right, and we do not, without the presence of other compelling factors as enumerated in *In re Marriage of Susan*, the existence of a sexual relationship between Mary and Minier would not tip the scales toward a finding of a *de facto* marriage between them.

¶ 88 Finally, we disagree with Paul that the other cases he has cited are factually on point. See *In re Marriage of Frasco*, 265 Ill. App. 3d 171 (1994) (reviewing court found *de facto* marriage

when, although the couple did not live together, their domestic arrangements conformed to the traditional marriage of wife doing household tasks and husband doing general maintenance and yard work, they ate all their meals together, they created a joint checking account, and they spent special occasions with ex-wife's family); *In re Marriage of Herrin*, 262 Ill. App. 3d 573 (1994) (ex-wife and boyfriend testified that one reason they had not married was because ex-wife would lose maintenance; boyfriend owned a home without gas, heat or water service, but claimed he slept there almost seven nights a week; ex-wife had taken out a loan in her name so that boyfriend's computer would not be repossessed.) Based upon the totality of the circumstances in this case, the trial court's order denying Paul's petition to terminate maintenance was not against the manifest weight of the evidence.

¶ 89 4. Real Estate Taxes and Insurance on the Whitehall Property

¶ 90 Next, Paul argues that it was an abuse of discretion for the trial court to order him to pay expenses related to property that was awarded to Mary. Specifically, he takes issue with the part of the final judgment order where the court ordered the real estate taxes and insurance on the Whitehall property to be "prorated between the parties as of entry of this order except as may already have been covered in a temporary support order in this case which set forth an obligation to make a payment." Paul argues that since the trial court's temporary support order of October 28, 2010, provided that "[p]etitioner is to pay the real estate taxes, including any interest and penalties on the Whitehall property, said payments to be without prejudice and subject to reallocation at trial," a reading of both the final judgment and the temporary order together indicates that the parties are to share the expense for the insurance on the Whitehall property, but that Paul is to absorb the liability of the real estate taxes on that property.

¶ 91 In response to this argument, Mary contends that the trial court did not abuse its discretion in ordering Paul to pay a prorated portion of the real estate taxes and insurance on this property because the prorated portion that he was required to pay was the amount owed prior to the judgment of dissolution. Specifically, she claims, "[t]he trial court was considering the just proportion of marital property as well as marital debt and expenses, *in requiring the parties to split the taxes prior to the date of dissolution.*" In his reply brief, Paul argues that although beneficial to him, Mary's assessment of the trial court's judgment is in error, and argues that it is an abuse of discretion for a court to award property to one party and to require the other party to assume the liability thereon. See *In re Marriage of Guntren*, 141 Ill. App. 3d 1, 7 (1986).

¶ 92 In order to properly address this issue we will need to review the temporary support orders entered by the trial court on September 22, 2009, and October 28, 2010. We will also review all of the relevant portions of the trial court's May 25, 2011, judgment order regarding the Whitehall property, *and* the trial court's order dated September 28, 2011 modifying the final order, which neither party does when discussing this issue.

¶ 93 On September 22, 2009, the trial court entered a temporary support order and ruled as follows: (1) Mary was responsible for the first and second mortgages, utilities and maintenance on the Whitehall property; expenses with regard to food; and payment on two of her vehicles; (2) Paul was responsible for all other obligations of the parties, except certain credit card charges which are not pertinent to this appeal.

¶ 94 In September 2010, Paul filed a petition to clarify the September 2009 order on the ground that Mary had not paid the real estate taxes on the Whitehall property which were due in June and September 2010. On October 28, 2010, the trial court entered an order clarifying the September

2009 temporary support order and ruled that Paul was required to pay the real estate taxes, including any interest and penalties, on the Whitehall property, "said payments to be without prejudice and subject to re-allocation at time of trial ***."

¶ 95 On May 25, 2011, in its final judgment order, the trial court held, in pertinent part:

> "That as to the real property at 4261 Whitehall Lane, Algonguin, Illinois, 60102, the combined first and second mortgages exceed the fair market value of the property. Respondent cannot refinance under those circumstances. Petitioner shall quit-claim his interest in said residence to Respondent without requiring her to refinance. Respondent shall be responsible for payment of the first and second mortgages, *real estate taxes, and insurance, and shall hold Petitioner harmless and indemnify him thereon. *** Taxes and insurance will be prorated between the parties as of entry of this order except as may already have been covered in a temporary support order in this case which set forth an obligation to make a payment."*

¶ 96 On September 28, 2011, the trial court entered a modified order in response to Paul's request, among other things, to clarify the portion of the judgment order which pertained to the proration of the real estate taxes and insurance on the Whitehall property. In that order, the trial court held, "[p]etitioner Paul Claps shall be responsible for the payment of the real estate taxes and insurance on 4261 Whitehall Lane, Algonguin, Illinois property through May 25, 2011."

¶ 97 Strangely, neither Paul nor Mary references the modified order in their argument and instead they both come up with alternative interpretations of the "proration sentence." Based upon the May 25, 2011, judgment order and the modified judgment order entered on September 28, 2011, it is clear that Paul is responsible for the real estate taxes and insurance on the Whitehall property through

May 25, 2011, and Mary is responsible for such debts thereafter. Since the 2010 real estate taxes were not due on the Whitehall property until after May 25, 2011, Paul is not required to pay the 2010 real estate taxes for that property. As to insurance, Paul is responsible for any premiums that were due up to the date of the judgment order. Accordingly, we reject Paul's argument that the trial court abused its discretion in awarding Mary property and requiring him to assume the liability thereon since no such ruling occurred.

¶ 98 B. Mary's Cross Appeal

¶ 99 1. Dissipation Claims

¶ 100 On cross-appeal, Mary argues that the trial court erred in only finding that Paul dissipated $400,982 in marital assets. Instead, she argues that she presented evidence that Paul dissipated $607,238 in marital assets. Specifically, she claims that the trial court erred in failing to find that Paul dissipated the following assets: (1) $61,000 of the IRA he cashed out in October 2009; (2) both the 2008 *and* the 2009 federal and state tax refunds; and (3) the $50,000 in earnest money the parties lost as a result of cancelling the contract on the house on Woodland Hollow Trail. Within this argument, Mary also argues that with the exception of the 2008 taxes, the trial court manifestly erred in failing to address these other items in its final order.

¶ 101 We initially note that although Mary argues the trial court erred in failing to find that Paul dissipated $607,238 in marital assets, her specific contentions on appeal do not cover the difference between her claimed amount of dissipation and the amount of dissipation that the trial court found, or $206, 256. Since we will only address those specific issues raised on appeal, Mary has forfeited any argument that she is entitled to a finding that Paul dissipated marital assets that are not specifically addressed in her briefs on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

Further, Mary's claim that the trial court erred when it failed to mention the IRA, the 2009 taxes or the earnest money on the Woodland Hollow Trail house in its May 25, 2011, order is without merit. The final judgment order specifically lists the assets which the trial court found Paul had dissipated. The court was under no obligation to list all the assets that Mary alleged were dissipated in her notice of dissipation or argued at trial, and she does not cite any authority for the proposition that the trial court was required to do so. We now turn to the merits of the dissipation claims Mary has raised.

¶ 102 Again, the spouse charged with dissipation of marital funds has the burden of showing by clear and convincing evidence how the marital funds were spent. *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 999 (2011). Vague and general testimony that marital funds were used for marital expenses is inadequate to meet the burden of showing how the funds were spent. *In re Marriage of Carter*, 317 Ill. App. 3d 546, 552 (2000). A trial court's determination on the issue of dissipation will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 204 (2005).

¶ 103 a. The IRA

¶ 104 With regard to the IRA, Mary argues that this court should find that Paul dissipated $61,000 of the $91,192.20 IRA ($30,000 was used to pay Mary's legal bills) because his testimony was too general and vague to rebut a claim of dissipation. Mary contends that Paul's testimony regarding how he spent the funds from the IRA consist of his sole comment that he used the funds to pay off bills. In response, Paul admits that he did testify that he used the money to pay bills, but argues that he gave detailed explanations regarding his expenditures at trial, and generally cites to pages 4 to 24 of his brief. Paul also notes that Mary has not considered the taxes that he was required to pay as a result of the withdrawal of the IRA funds.

¶ 105 On direct examination Paul testified as following regarding the IRA:

"Q. Do you know what that document is?

A. 13?

Q. 13.

[Mary's counsel]: Okay.

A. That is the withdrawal of my simple IRA.

Q. Is that the IRA you were testifying about?

A. Yes, I was.

Q. And who is that with?

A. Genworth Financial.

Q. At some point did you cash that IRA out?

A. I did.

Q. Okay. And approximately when did you do that?

A. Looks like the end of October of 2009.

Q. Okay. And where did you – where did those funds get transferred to?

A. Into my checking account.

Q. Okay. Can you tell the court what's happened to those funds, who they were disbursed to after they went into your checking account?

A. The first $30,000 went to Mark Gummerson's law firm. The remaining balance of $60,000 has been paid through bills that I would have had, either paying off bills or paying bills. At that time of – at this time of the season –

[Mary's counsel]: Objection, narrative.

THE COURT: Sustained. He used it to pay bills. Next question.

Q. Used it to pay bills, correct.

A. Were all those bills paid out of your checking account?

Q. Yes, they were.

Q. Have any of those funds been distributed to any third parties, other than paying bills?

A. They have not."

¶ 106 Here, Paul's testimony that he used the funds from the parties' IRA to pay bills is insufficient to meet the burden of showing by clear and convincing evidence how those funds were spent. Like other points in his brief, Paul again refers generally to his testimony at trial without discussing any specific testimony that he gave about the IRA and how its funds were spent. Finally, with regard to Paul's claim that Mary has not considered the tax consequences that he was required to pay as a result of the withdrawal of the IRA funds, Paul does not cite to any testimony at trial regarding the tax consequences of withdrawing the IRA. Further, in her reply brief, Mary states that Paul did not testify to any such tax consequences. For all these reasons, Paul failed to meet his burden of showing that the IRA funds were spent for a marital purpose. Accordingly, the trial court's failure to find that Paul dissipated $61,000 of the parties' IRA was against the manifest weight of the evidence.

¶ 107 b. The 2008 and 2009 Tax Refunds

¶ 108 Next, Mary contends that the trial court's finding that Paul dissipated the 2008 federal tax refund in the amount of $14,646 and the 2008 state tax refund in the amount of $1,114 was against the manifest weight of the evidence because: (1) the trial court erroneously listed the 2009 refund

amounts as the 2008 refund amounts; and (2) since Paul testified that he deposited the 2008 and 2009 tax returns into his separate checking account, and unexplained spending of joint tax returns can constitute dissipation, he thereby dissipated the federal and state refunds for *both* 2008 and 2009.[2]

¶ 109 We have reviewed the trial court's order and agree with Mary that it is unclear whether the court was referring to the 2008 or 2009 state and federal tax refunds in the section where it listed the assets that Paul had dissipated since it listed 2008 as the year the refunds were dissipated, but the figures the court used are from the 2009 refunds. The trial court's error makes it impossible for this court to review the merits of this particular issue on appeal. Accordingly, we reverse that portion of the trial court's order finding that Paul dissipated the 2008 federal and state tax refunds, and we remand this issue for the trial court to reconsider its order and clarify which tax refunds from what year(s) it was referring to as having been dissipated by Paul.

¶ 110 c. Earnest Money on the Woodland Hollow Trail House

¶ 111 Finally, Mary argues that it was error for the trial court to not find that Paul had dissipated the $50,000 that the parties lost when they cancelled the contract on the Woodland Hollow Trail house. She argues that she did not know the contract was cancelled and did not sign the release

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[2]Although Mary did not allege that Paul dissipated the 2009 federal and state tax refunds in her notice of dissipation, she did make such an argument at trial. Therefore, such a claim is proper. We note, however, that the Act now requires the party alleging dissipation to give notice of its intent to claim dissipation and specifically identify the dissipated property no later than 60 days before trial or 30 days after discovery closes, whichever is later. Pub. Act 97-941 § 5 (eff. Jan. 1, 2013) (amending 750 ILCS 5/503(d)(2) (West 2010).

associated with selling the contract. She claims that this dissipation was based upon Paul's unilateral decision to cancel the contract within days of purchasing the house on Crabtree Lane without her knowledge.

¶ 112 We are not persuaded. Here, although Mary claims that she knew nothing about the Woodland Hollow contract being cancelled, she admitted at trial that she and Paul had had conversations about cancelling the contract. She also admitted that Paul told her that he wanted to separate some time between Mother's Day and early June, 2008. Further, although Mary denies signing the General Mutual Release dated June 9, 2008, cancelling the contract to purchase the Prairie Grove property and forfeiting the $50,000 deposit on the Woodland Hollow lot, a review of her signature on the contract is sufficiently similar to Mary's signature on other documents contained in the record to support an inference that she signed the General Mutual Release. The trial court, as finder of fact, had the right to make its own handwriting sample comparisons when deciding whether the signature was authentic. See *Hoxha v. LaSalle National Bank* 365 Ill. App. 3d 80, 85 (2006). Given all this evidence, we cannot say that the trial court's finding that Paul did not dissipate the lost earnest money on the Woodland Hollow Trail house was against the manifest weight of the evidence.

¶ 113 2. Petition for Contribution to Attorney's Fees and Costs

¶ 114 Finally, Mary claims that the trial court abused its discretion in denying her petition for contribution of attorney's fees and costs. Specifically, she argues that the trial court abused its discretion in denying her petition because at the time of trial her outstanding fees were $75,000, and requiring her to pay the fees in their entirety would exhaust a large portion of her estate.

¶ 115 Generally, attorney fees are the responsibility of the party who incurred the fees. *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 995 (2011). However, pursuant to section 503(j) of the

Act, a trial court can order one party to contribute to the other party's attorney's fees and costs based on the criteria for the division of marital property under section 503 of the Act, and, if maintenance has been awarded, on the criteria for an award of maintenance under section 504 of the Act. 750 ILCS 5/503(j) (West 2010). Section 508 of the Act also allows the trial court, in its discretion and after considering all the financial resources of the parties, to order one spouse to pay a part or all of the other's attorney's fees arising out of the dissolution proceedings. *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1084 (1997); 750 ILCS 5/508(a) (West 2010). A trial court's decision to award or deny fees in a dissolution proceeding will be reviewed under an abuse of discretion standard. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). A trial court will be found to have abused its discretion when it acted arbitrarily without conscientious judgment, or in the view of all of the circumstances, exceeded the bounds of reason and ignored settled principles of law so that substantial injustice resulted. *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240 (2003).

¶ 116 Although Mary argues that at the time of trial her attorneys' fees totaled $75,000, her cite to the record for that amount is from her testimony on April 12, 2011, in response to a question as to what she believed to be the total amount owed to her attorneys. However, when Mary filed her petition for contribution of attorneys' fees and costs on May 5, 2011, she indicated that her total unpaid attorneys' fees and costs were $93,936.28. It is the latter figure that we will keep in mind when reviewing this issue.

¶ 117 Here, when the trial court denied Mary's petition for contribution of attorneys' fees and costs it noted that it was denying the petition based upon all the division of property in this case. We have reviewed the division of property in this case along with Mary's award of maintenance and find that the trial court did not abuse its discretion in denying the petition.

¶ 118 Mary argues that requiring her to pay her attorneys' fees and costs in their entirety would exhaust a large portion of her estate because: (1) the Whitehall property which she was awarded has mortgages on it that exceed the fair market value of the property; and (2) the vehicles that she was awarded were encumbered with loans. We are not persuaded. Here, Mary was awarded $1,772.87 per week in maintenance through 2016 and reviewable thereafter. In addition, she was awarded half of the amount of marital property that the trial court found Paul had dissipated, which came to an additional $4,845.20 per month for the next 60 months. Further, Paul had already paid Mary's attorney $30,000 pursuant to a November 2009 court order. For all these reasons, we find that the trial court's order denying Mary's petition for contribution of attorneys' fees and costs was not an abuse of discretion.

¶ 119 III. CONCLUSION

¶ 120 In sum, we find that Paul did not prove by clear and convincing evidence that he used $61,000 of the parties' IRA for a marital purpose. Therefore, we reverse the trial court's order finding a total dissipation amount by Paul of $400,982 and remand this cause to the trial court to increase the finding of dissipation by $61,000. We also vacate the trial court's findings regarding dissipation of the 2008 federal and state tax refunds as erroneous and remand this issue for the trial court to clarify the specific year(s) and refund amounts it found that Paul had dissipated. The trial court's judgment is affirmed in all other respects.

¶ 121 The judgment of the circuit court of McHenry County is affirmed in part, reversed in part, vacated in part and remanded for proceedings consistent with this order.

¶ 122 Affirmed in part; reversed in part; vacated in part; remanded with directions.