

NOTICE
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2012 IL App (4th) 110745-U

Filed 4/5/12

NO. 4-11-0745

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of)	Appeal from
GLEN O. SCHWASS,)	Circuit Court of
Petitioner-Appellant,)	Macon County
and)	No. 09D580
BRENDA D. SCHWASS,)	
Respondent-Appellee.)	Honorable
)	Scott B. Diamond,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not abuse its discretion by (1) establishing permanent maintenance, (2) ordering an equitable payment in the amount of \$18,000, and (3) awarding attorney fees.

¶ 2 After a hearing in October 2010, the trial court dissolved the marriage of petitioner, Glen O. Schwass, and respondent, Brenda D. Schwass, and entered an order disposing of ancillary issues. In November 2010, Judge Theodore E. Paine entered a written order (1) approving the parties' agreement for disposition of the marital residence; (2) awarding Glen the real property located in Oakley, Illinois, as well as certain personal property; and (3) ordered Glen to pay (a) \$2,000 per month in permanent maintenance; (b) an equitable payment of \$18,000 within 30 days; and (c) \$5,000 toward Brenda's attorney fees within 90 days. In December 2010, after Judge Paine retired, Judge A.G. Webber entered a written judgment of

dissolution. In August 2011, Judge Scott B. Diamond awarded Glen certain papers, pictures, and other personal items but otherwise denied Glen's motion to reconsider.

¶ 3 Glen appeals, arguing that the trial court abused its discretion by (1) awarding Brenda permanent maintenance of \$2,000 per month; (2) ordering the \$18,000 equitable payment; and (3) requiring Glen to contribute \$5,000 toward Brenda's attorney fees. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in June 1981 and had three children during their marriage, all of whom are adults. At the time of their September 2009 separation, Glen was 48 years old and Brenda was 46 years old. Several months later, Glen filed a petition for dissolution of marriage. In May 2010, Brenda filed a counterpetition for dissolution of marriage, requesting maintenance and attorney fees.

¶ 6 Prior to the dissolution hearing, Glen filed a position statement which stated:

"1. Marital residence. The parties are the owners of the residence located [in] Decatur, Illinois. The residence was purchased in 2004 for \$150,000 and there is an outstanding mortgage balance owed of \$80,270.37. [Glen] is interested in attempting to purchase the interest of [Brenda] in the equity of the residence. He requests that the residence be appraised by an appraiser to be selected by the parties (at the joint expense of the parties) and within 60 days of the receipt of the appraisal by [Glen], he should have the option to purchase the interest of [Brenda] and to refi-

nance the house to release her from the indebtedness. If he does not do so within 60 days of the receipt of the appraisal, then the residence shall be sold and the net proceeds shall be split equally. However, in the event of the sale of the residence, [Glen] shall be reimbursed for any reduction of the mortgage balance, taxes, insurance or repairs paid after the separation of the parties on September 28, 2008.

3. [Glen's] Residence at Oakley. In November, [sic] 2009, [Glen] purchased a residence in Oakley for a separate place to reside. The purchase price was \$28,000, and he paid \$1,000 down and the balance owed is on a mortgage at Buena Vista Bank, with a present balance owed of \$27,057.32 (monthly payments of \$250). [Glen] should receive the Oakley residence.

5. Vehicles. [Brenda] should receive her 2005 Pontiac Bonneville (value \$7,560 balance \$6,595.09)[.] [Glen] should receive his 2007 Dodge Ram pickup (value \$ 12,525.00, balance \$8,119.51) and his Harley Davidson Road Kin, motorcycle (appraised twice, for \$9,615.00 and \$8,510.00, no debt).

* * *

13. Maintenance. *** In lieu of maintenance, [Glen] would

propose to make the remaining payments of [Brenda's] vehicle, which is \$344 a month for the remaining eighteen (18) months (total \$6,192), to terminate sooner upon any statutory condition for termination of maintenance."

¶ 7

On the day of the hearing, Brenda filed a position statement, stating:

"A. [Glen] may purchase [Brenda's] interest in the [Decatur] residence for a purchase price of \$150,000.00. [Brenda] would be paid for her interest based upon taking the purchase price and deducting from it the mortgage balance in the approximate sum of \$82,000.00 and dividing the net equity of the parties in the residence by two. Payment should be ordered from [Glen] to [Brenda] for her interest within 30 days of the entry of any Judgment of Dissolution of Marriage.

B. The foregoing residence would [be] listed for sale with a realtor agreed upon by the parties and sold at a price agreed upon by the parties with the net equity derived therefrom being divided equally between the parties hereto.

* * *

The [Oakley] residence should be awarded solely to [Glen]. The marital estate should be reimbursed for the payments made from marital funds *** in the total sum of \$2,800.00 and for the marital funds used for repairs and improvements in the total sum of

\$2,715.00.

[Glen] should be ordered to pay to [Brenda] her one-half share of the marital reimbursement in the amount of \$2,757.50 within 30 days of the day of a judgment entered in this case.

* * *

Motor Vehicles

* * *

C. [Glen] purchased a 2004 Harley Davidson FLHRCI motorcycle October 4, 2007, with marital funds. The foregoing vehicle is free and clear of any liens.

Position of Defendant: The foregoing vehicle should be sold with the net proceeds divided or in the alternative, [Brenda's] interest in the vehicle may be purchased by [Glen] paying her one-half of the appraised value.

* * *

Maintenance

* * *

[Glen] should be ordered to pay to [Brenda] the sum of \$2,000.00 per month as permanent maintenance."

¶ 8 The following background was garnered from evidence presented at the parties' October 2010 trial.

¶ 9 A. Glen's Testimony

¶ 10 Glen testified that he was the branch manager at Springfield Electric Supply, where he earned a gross income of \$82,278 in 2007; \$97,454 in 2008; and \$94,854 in 2009. Glen testified his monthly expenses were \$4,390. He received reimbursement from his employer for business-related expenses and vehicle mileage. Glen further testified that he received \$558 per month for fixed vehicle expenses and was reimbursed for mileage at approximately \$1,060 per month. Glen placed these reimbursable expenses on his personal credit card.

¶ 11 Glen testified that in 2004, the parties purchased a house in Decatur, for approximately \$150,000 and, at time of trial, the property had a mortgage balance of approximately \$80,000.

¶ 12 During Glen's direct testimony, his counsel presented an agreement whereby Glen would attempt to purchase the [Decatur] property:

"[GLEN'S COUNSEL]: You are interested in attempting to purchase [Brenda's] interest in the residence, is that correct?

[GLEN]: (Unintelligible) Yes.

[GLEN'S COUNSEL]: You would like for that to be based upon an appraisal of the house?

[GLEN]: Yes, sir.

* * *

THE COURT: So, a stipulation to have it appraised and with [Glen] to have the option of buying it; but as far as division of the proceeds and the amount that it would cost for him to buy her interest is something that you want to contest.

[BRENDA'S COUNSEL]: I think we could agree on net proceeds. *** We could certainly agree to that.

We have an issue here of maintenance which is on the table. The court can equitably divide property in lieu of maintenance and that would be the issue. So, if maintenance is ordered then I think an equal division is appropriate; if maintenance isn't, then, obviously, we are asking for a substantially greater percentage of the marital estate.

THE COURT: Okay. So the thing that would still be in dispute would be how either net proceeds would be divided or what amount it would cost [Glen] to purchase [Brenda's] interest in the residence.

[BRENDA'S COUNSEL]: I think that can be set by appraisal. We will agree to that.

[GLEN'S COUNSEL]: Yes.

* * *

[GLEN'S COUNSEL]: And, [Glen], in the event that you do not purchase her interest within sixty days then the residence would be placed on the market for sale?

[GLEN]: That is correct.

[GLEN'S COUNSEL]: And you are asking that if the residence is placed on the market for sale the court consider reim-

bursing you for any reduction in mortgage balance, taxes, insurance or repairs?

[GLEN]: Yes, sir."

¶ 13 Glen drove a 2007 Dodge Ram valued at \$12,525, with a loan balance of \$8,119.51. Brenda drove a 2005 Pontiac Bonneville, valued at \$7,560, with a loan balance of \$6,595. Glen added that during their marriage, they had also purchased a used 2004 Harley-Davidson Road King, which had a trade-in value of \$8,510 and a market value of between \$11,500 and \$11,900.

¶ 14 Glen explained that in November 2009, he purchased a home in Oakley for \$28,000. Glen improved the Oakley property with \$2,715 of building materials.

¶ 15 During the marriage, the parties created an investment account as joint tenants with right of survivorship. Glen transferred his existing individual investment account into the joint account. Glen explained that he made additional contributions to the joint investment account during the course of the marriage, and used monies from that account to make house payments for September, October, November, and December 2010. At the time of trial, their joint investment account had a value of approximately \$77,644.

¶ 16 Glen said that the parties closed a joint account at Soy Capital in 2009, from which he removed \$4,800 and Brenda removed \$3,000. The \$1,800 difference represented paychecks he deposited after Brenda removed the \$3,000.

¶ 17 Glen's trial exhibits also showed the following: (1) his individual retirement account had a value of approximately \$75,624, (2) his employee stock ownership plan with Springfield Electric Supply had a value of approximately \$10,2626, (3) his 401(k) plan had a

value of approximately \$47,334.

¶ 18

B. Brenda's Testimony

¶ 19

Brenda testified that in 1994, she began working as a part-time nurse at Decatur Memorial Hospital. In December 2008, Brenda accepted a full-time position as a staff-registered nurse, which paid an annual salary of approximately \$50,000. Brenda's monthly expenses, including the mortgage payment for the marital residence, were approximately \$3,500. During the parties' separation, she was only able to afford the mortgage payment of \$1,290 in 2 out of 25 months, and she would not be able to afford the payment without assistance. Brenda testified that her individual retirement account had a value of approximately \$4,400.

¶ 20

Brenda explained that the value of the living room set Glen requested was \$1,000 and the bedroom set was valued at \$3,800, and she requested half of that value. Brenda said she owed attorney fees of approximately \$7,600. Brenda stipulated to the terms of the parties' agreement related to the marital residence being sold or acquired by Glen.

¶ 21

C. The Trial Court's Determination as to Ancillary Issues

¶ 22

At the close of evidence, Judge Paine took the case under advisement. In November 2010, Judge Paine entered an order that divided the marital property and debts, and awarded maintenance and attorney fees in favor of Brenda. The court also awarded Brenda monthly maintenance of \$2,000, an equitable payment of \$18,000, and \$5,000 for attorney fees. In December 2010, Judge Webber entered the dissolution judgment. In August 2011, Judge Diamond granted Glen's motion to reconsider insofar as it sought certain photos and videos but otherwise denied it.

¶ 23

This appeal followed.

¶ 24

II. ANALYSIS

¶ 25 Glen argues that the trial court abused its discretion by (1) awarding Brenda permanent maintenance of \$2,000 per month; (2) ordering the \$18,000 equitable payment; and (3) requiring Glen to contribute \$5,000 toward Brenda's attorney fees. We address Glen's contentions in turn.

¶ 26

A. Glen's Maintenance Claim

¶ 27 Glen contends that the maintenance award is not supported by the appropriate statutory factors. Specifically, Glen asserts that (1) Brenda is not entitled to maintenance because she was gainfully employed as a registered nurse at the time of trial; (2) Brenda has the ability to support herself without assistance; (3) his future earning capacity is not greater than Brenda's because she can increase her income by working overtime; (4) the award is not supported by the evidence as to the standard of living during the course of the marriage; (5) while the marriage was of significant duration, neither party created a pattern of reliance upon the other over the course of the marriage; (6) the trial court did not consider the property division it was making prior to determining maintenance; and (7) Brenda failed to establish Glen's ability to pay the maintenance award. We disagree.

¶ 28

1. *The Standard of Review*

¶ 29 A trial court's decision to award maintenance is a matter within the court's sound discretion. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1041, 899 N.E.2d 1097, 1103 (2008). Indeed, the trial court's determination as to maintenance is presumed correct. *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063, 838 N.E.2d 310, 314 (2005). The party seeking reversal of a maintenance award bears the burden of showing the court abused its

discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189.

¶ 30 2. *Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act*

¶ 31 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) sets forth the following factors for the trial court to consider when determining the duration and amount of a maintenance award:

"(1) the income and property of each party, including marital property apportioned and non[]marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

- (7) the duration of the marriage;
- (8) the age and the physical and emotional condition of both parties;
- (9) the tax consequences of the property division upon the respective economic circumstances of the parties;
- (10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;
- (11) any valid agreement of the parties; and
- (12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2010).

¶ 32 In considering the factors listed in section 504(a), the trial court is not required to give them equal weight so long as the balance struck by the court is reasonable under the circumstances. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543, 548 (2010) (quoting *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485, 595 N.E.2d 1349, 1353 (1992)).

"The benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, the duration of the marriage, the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the non[]marital property.' " *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615, 814 N.E.2d 152, 157 (2004) (quoting *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972, 605 N.E.2d 670, 676 (1992)). Further, in lengthy marriages where the recipient of maintenance served as a caregiver for the children, Illinois courts give consideration to a permanent

award of maintenance to stay-at-home spouses. *Nord*, 402 Ill. App. 3d at 305, 932 N.E.2d at 557 (quoting *In re Marriage of Culp*, 341 Ill. App. 3d 390, 398, 792 N.E.2d 452, 458 (2003)).

¶ 33 3. *The Section 504(a) Factors As Applied to This Case*

¶ 34 During the parties' 29-year marriage, Brenda acted as the homemaker while Glen worked full-time outside of the home. The record shows that Brenda limited her employment so that she could remain at home with her three children because Glen was frequently out of town. Only after the parties' separation in December 2008 did Brenda enter the workforce full-time. While Brenda has current gainful employment, she delayed entry into the workplace, which resulted in reduced experience and earning potential.

¶ 35 In this case, the record supports the trial court's maintenance award, given a disparity of approximately \$30,000 in annual income between Glen and Brenda. See *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 792, 801 N.E.2d 591, 596 (2003) (citing *In re Marriage of Hart*, 194 Ill. App. 3d 839, 853, 551 N.E.2d 737, 745 (1990) (Steigmann, J., specially concurring) (Illinois courts recognize that it is inequitable upon dissolution to saddle a former spouse with the burden of her reduced earning potential and to allow the other former spouse to continue the advantageous position he reached through their joint efforts.)).

¶ 36 Glen's theory that the trial court did not consider the property division in formulating the maintenance award is without support and unpersuasive. The trial court heard testimony as to the parties' standard of living during their marriage, which included the value of (1) the marital residence, (2) personal property, and (3) investments made during the marriage. The record reveals Brenda remained in the marital residence and was unable to afford the mortgage payment of \$1,290 without assistance. As previously explained, the court heard testimony as to

the parties' respective expenses.

¶ 37 In short, the evidence presented supports the trial court's maintenance award, given that Brenda would have substantially less disposable income. See *Selinger*, 351 Ill. App. 3d at 620-21, 814 N.E.2d at 161-62 (finding award of maintenance, while not permitting the same standard of living as during the marriage to both the parties, would help close the lifestyle gap between them).

¶ 38 In closing, we note that Brenda further argues that Glen's actual expenses were not properly reflected because of employer reimbursements. Because the trial court is in the best position to determine the credibility of the witnesses and their ability to pay, we defer to the trial court's findings. *In re Marriage of Manker*, 375 Ill. App. 3d 465, 477, 874 N.E.2d 880, 890 (2007) (quoting *Flynn v. Henkel*, 369 Ill. App. 3d 328, 333, 859 N.E.2d 1063, 1067 (2006)).

¶ 39 Accordingly, we conclude that the trial court did not abuse its discretion in awarding permanent maintenance given that the \$2,000 maintenance award is supported by evidence of Brenda's reasonable needs in light of the standard of living established during the marriage.

¶ 40 B. Glen's Claim That the Trial Court Abused Its Discretion by
Ordering an \$18,000 Equitable Payment

¶ 41 Glen argues the trial court abused its discretion by ordering an \$18,000 equitable payment to equalize the marital estate division. Glen contends Judge Paine did not understand the property division and entered an erroneous order given Judge Paine's November 2010 order, which states as follows: "[t]he agreement for disposition of the marital residence is approved." Glen asserts that no such "agreement" existed. Further, Glen posits that "it is obvious that Judge

Paine *** did not know what terms the *** [December 2010] Judgment of Dissolution might contain when he entered his order." Additionally, Glen contends that no evidentiary basis supports the \$18,000 equitable payment. We disagree.

¶ 42

1. *Standard of Review*

¶ 43

We review a trial court's determination on marital property valuations under the manifest-weight-of-the-evidence standard; however, we review a trial court's decision concerning the ultimate division of marital property under an abuse-of-discretion standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482 (2006); *In re Marriage of Stone*, 155 Ill. App. 3d 62, 72, 507 N.E.2d 900, 906 (1987). The valuation of assets in an action for dissolution of marriage is a question of fact for the trial court to determine, and any conflicts in testimony concerning the valuation of such assets are matters to be resolved by the trier of fact. *Schneider*, 214 Ill. 2d at 162, 824 N.E.2d at 182-83. A trial court's selection of a value somewhere between the conflicting values in evidence is not arbitrary. *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 736, 778 N.E.2d 762, 767 (2002).

¶ 44

2. *Section 503(d) of the Dissolution Act*

¶ 45

Section 503(d) of the Dissolution Act requires a court to divide the marital property in "just proportions." 750 ILCS 5/503(d) (West 2010). An award of property in just proportions does not mean equal proportions. *Walker*, 386 Ill. App. 3d at 1034, 899 N.E.2d at 1104. Section 503(d) of the Dissolution Act sets forth the factors for the trial court to consider. 750 ILCS 5/503(d) (West 2010).

¶ 46

3. *Disposition of the Marital Residence*

¶ 47

As previously explained, the record shows that the parties agreed that Glen would

either purchase Brenda's interest in the Decatur residence, as set by appraisal, or the residence would be sold with net proceeds divided, after adjusting for costs. The only issue not resolved by the parties was the percentage of net equity of the Decatur residence to be awarded to each party, as Brenda sought more than 50% if she was not awarded maintenance. By pretrial memorandum, Glen agreed to an equal division of net equity. Thus, the only issue for the court to resolve was the amount of net equity apportioned to each party, as Brenda's request for an equal split was dependent on whether the trial court awarded her maintenance.

¶ 48 Contrary to Glen's contentions, he requested that the Decatur residence be sold and that the net proceeds be divided equally after accounting for expenses of mortgage reduction, taxes, insurance, and repairs. In the alternative, he requested to purchase Brenda's financial interest as set by appraisal. Brenda agreed to this at the October hearing, as long as she received maintenance. When Judge Paine entered his November 2010 order and stated "the agreement for disposition of the marital residence is approved," this is the "agreement" to which he referred; it is the disposition Glen asked for and to which Brenda acquiesced subject to her request for maintenance. Judge Webber's December 2010 judgment simply laid out the disposition of the Decatur residence in the fuller terms of Glen's request. Glen's claim that the parties had not agreed in court or in their pleadings as to the disposition of the marital residence is without merit. See *In re Marriage of Lorton*, 203 Ill. App. 3d 823, 827, 561 N.E.2d 156, 159 (1990) (holding that a settlement agreement need not be reduced to writing or signed by the parties to make it valid and binding where formal execution is not a condition precedent to its completion. Oral property settlements are binding upon the parties where the terms are clear, certain, and definite in its material provisions).

¶ 49 Moreover, the December 2010 judgment of dissolution superceded the November 2010 order and controls the disposition of the Decatur residence. The terms of the December 2010 judgment of dissolution incorporated the parties' positions stated in their respective pretrial memorandum and in open court in October 2010. *Cf.*, *In re Marriage of King*, 336 Ill. App. 3d 83, 90, 783 N.E.2d 115, 121 (2002); *In re Marriage of Sherrick*, 214 Ill. App. 3d 92, 96, 573 N.E.2d 335, 338 (1991) ("[W]hen a property agreement is approved by the court and incorporated into a judgment of dissolution, the agreement is merged with the judgment and the parties' rights rest on the judgment.").

¶ 50 *4. The \$18,000 Equitable Payment*

¶ 51 Glen contends that the trial court's award of an \$18,000 equitable payment is not supported by the evidence. Glen asserts that the award of property was relatively equal and that the \$18,000 payment required a determination of the value of the sale proceeds of the house. We note neither Judge Paine's November 2010 order nor Judge Webber's December 2010 dissolution judgment contains a listing of property and valuations thereof apportioned to each party.

¶ 52 Glen fails to develop this argument with evidentiary values or citation to the record evidence. As such, Glen does not provide a record sufficient to support the argument of which he complains. See *In re Marriage of Cerven*, 317 Ill. App. 3d 895, 900, 742 N.E.2d 343, 347-48 (2000) (Party's failure, in argument section of brief, to cite to record so as to direct appellate court to those places where claims could be substantiated on appeal of dissolution judgment, was violation of supreme court rules, and made review more onerous.); see also *People v. Sprind*, 403 Ill. App. 3d 772, 778-79, 933 N.E.2d 1197, 1204 (2010) (Party's failure to provide proper citations to the record on appeal is a violation of supreme court rules, the

consequence of which is the forfeiture of the argument lacking citations.); *Mikrut v. First Bank of Oak Park*, 359 Ill. App. 3d 37, 51, 832 N.E.2d 376, 387 (2005) (Failure to provide relevant citations to the record is a violation of supreme court rules and results in waiver.).

¶ 53 Additionally, we note that Glen does not cite any authority to support his argument that the property distribution was erroneous. Lack of citation to legal authority results in forfeiture. *In re Marriage of Suriano and LaFeber*, 324 Ill. App. 3d 839, 851, 756 N.E.2d 382, 392 (2001); *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 474-75, 930 N.E.2d 1024, 1027 (2010) (a reviewing court is not simply a depository in which the appealing party may dump the burden of argument and research). Indeed, as evidenced by his closing reference to the trial court's failure to award him photos that it awarded him on the motion for reconsideration, his argument here is largely that stated in his memorandum in support of his motion to reconsider.

¶ 54 On the merits, the trial court did not provide an itemized listing of the property with a stated valuation, but it understood either Glen would purchase Brenda's interest in the marital residence, as valued by an appraisal, or the residence would be sold with net proceeds equally divided.

¶ 55 However, Brenda's brief provides greater assistance on the valuation evidence and we reviewed the record which, shows the following:

	Glen's Value	Brenda's Value	Awarded
2007 Dodge Ram	\$4,405.49	\$4,405.49	Glen
2004 Harley-Davidson Road King	\$8,500 (trade-in) to \$11,900 (resale)	\$11,900	Glen
2005 Pontiac Bonneville	\$965.00	\$965.00	Brenda

Glen's Employee Stock Ownership Plan	\$10,262.03		Equally Split
Glen's 401(k) Plan	\$47,334.43		Equally Split
Joint Money Market Account at Edwards Jones as of September 24, 2010	\$2,338.32		Equally Split
Joint Investment Account at Edwards Jones as of September 24, 2010	\$77,644.44		Equally Split
Glen's Individual Retirement Account at Edwards Jones as of September 24, 2010	\$75,623.85		Equally Split
Brenda's Individual Retirement Account at Edwards Jones as of date of trial	\$4,400.00	\$4,400.00	Equally Split
4764 S. Coulters Mill, Oakley, Illinois	\$3,715	\$5,415	Equally Split

Additionally, Brenda presented evidence that the household furniture requested by Glen was worth approximately \$3,025 more than he provided in his exhibits. This would value the furniture awarded to Glen at \$6,350 and Brenda at \$4,340.

¶ 56 Thus, based on the foregoing, Glen was awarded property worth approximately between \$128,747 and \$136,688. Brenda was awarded property worth approximately \$114,107.

¶ 57 As reflected above, the parties presented conflicting evidence as to the value of (1) the 2004 Harley-Davidson; (2) certain household furniture; and (3) payments made toward the Oakley property. The court awarded Glen the 2004 Harley-Davidson, requested household furniture, and the Oakley property. Based on Glen's values, a difference of approximately \$14,640 to \$17,040. Based on Brenda's values there is a difference of approximately \$22,587.

¶ 58 Contrary to Glen's assertion, there is a disparity in the property awarded to the

parties. In view of this and the other evidence the trial court heard, we do not find the \$18,000 equitable payment was an abuse of discretion.

¶ 59 C. Glen's Claim the Trial Court Erred by Awarding Attorney Fees

¶ 60 Glen next contends that the trial court abused its discretion by ordering him to pay Brenda's attorney fees. Specifically, Glen asserts that Brenda did not present evidence of her inability to pay her attorney fees or Glen's ability to pay those fees. We disagree.

¶ 61 1. *Standard of Review*

¶ 62 The allowance of attorney fees is within the sound discretion of the trial court, and its determination will not be overturned unless the trial court has clearly abused its discretion. *Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190.

¶ 63 2. *Section 508 of the Dissolution Act*

¶ 64 Section 508 of the Dissolution Act permits the award of attorney fees so that a spouse with greater financial resources will not have an unfair advantage in dissolution proceedings. *In re Marriage of Pal*, 397 Ill. App. 3d 903, 910, 924 N.E.2d 30, 36 (2010). The Dissolution Act does not require allocation of attorney fees based on a percentage of fees ultimately paid, and may take the form of a set dollar amount. *Suriano and LaFeber*, 324 Ill. App. 3d at 851, 756 N.E.2d at 392. The proper standard of an award of attorney fees is dependent on a showing by the party seeking them of an inability to pay and a demonstration of the ability of the other spouse to do so. *Selinger*, 351 Ill. App. 3d at 622, 814 N.E.2d at 163. Financial inability to pay does not demand a showing of destitution, but rather that payment would strip her of her means of support or undermine her economic stability. *In re Marriage of Davis*, 292 Ill. App. 3d 802, 812, 686 N.E.2d 395, 402 (1997) (quoting *In re the Marriage of*

Minear, 287 Ill. App. 3d 1073, 1085, 679 N.E.2d 856, 865 (1997)).

¶ 65

3. Section 508 as Applied Here

¶ 66

Brenda testified that due to the parties' disparity in income, Glen should pay the balance of her attorney fees. The evidence shows that Brenda had significantly less savings and discretionary income from which to pay those fees. The parties' income and expenses were before the trial court, and Brenda presented an exhibit showing attorney fees of approximately \$7,600 at the time of trial.

¶ 67

Given that the record shows that the trial court considered the parties' respective ability to pay Brenda's attorney fees, we conclude that trial court did not abuse its discretion in awarding \$5,000 to Brenda in attorney fees.

¶ 68

III. CONCLUSION

¶ 69

For the reasons stated, we affirm the trial court's judgment.

¶ 70

Affirmed.