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FILED
JUL 0 6 2009
ROBERT J. MANGAN, CLERK
APPELLATE COURT 2nd DISTRICT

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LILLIAN AVELLO-KALISZ, Petitioner-Appellee, and STEVE J. KALISZ, JR., Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 06–DV--445 Honorable Gerald M. Zopp, Jr., Judge, Presiding.

RULE 23 ORDER

The marriage of petitioner, Lillian Avello-Kalisz, and respondent, Steve J. Kalisz, Jr., was dissolved on December 10, 2008. On appeal, Steve argues that the trial court erred: 1) by granting sole custody of their minor child to Lillian; 2) in its valuation of the marital residence; 3) in its finding that Lillian spent $12,300 of the $55,000 that she withdrew from the parties' joint bank accounts on living expenses; 4) in its distribution of marital assets; and 5) by awarding maintenance to Lillian in the amount of $940 per month for nine years. We affirm in part, vacate in part and remand.[1]

Both parties testified at trial which commenced in June, 2008. The parties' son, Stephen Avello, was born on December 2, 1991, prior to the marriage. The parties were married on April 15,

[1] While this case is expedited pursuant to Supreme Court Rule 306A (210 Ill. 2d R. 306A), the disposition is filed more than 150 days after the filing of the notice of appeal due to the number and complexity of the issues presented.

1997. During the marriage, Steve was employed by Starline-Chicago Faucet, where he is a plant manager at the company's facility in Milwaukee, Wisconsin. Lillian had been employed at the same company, but she was laid off in 2005 when the company relocated from Illinois to Milwaukee. She later obtained employment in Wauconda, Illinois, earning approximately $1350 per month.

On May 12, 2006, Lillian filed a Petition for Dissolution of Marriage. On or about May 11, 2006, she withdrew $40,000 from the parties' joint checking account and $15,000 from the parties' joint savings account. Lillian testified that, of the $55,000 total, $20,000 was paid out to Lillian's first attorney, Wendy Morgan; $20,000 to her attorney at trial, Peter Michling; $2,060 to Guardian ad Litem Karen Mensching; and $700 was paid out for mediation fees. She testified that the rest of the $55,000 paid for expenses such as doctor bills, medications, fuel for the car, and car maintenance. This sum included approximately $3,000 for medications, hospital bills and car repairs for which she had receipts. She testified that she had a checkbook register that reflected the total amount of expenditures. However, the record does not reflect that the register was entered into evidence.

Lillian received a severance package of $12,361 when she was terminated from the company. Lillian stated that she paid for half of all household expenses until 26 weeks after she was terminated from her job at Chicago Faucet, when her unemployment ran out. She stated that she filed for divorce soon after that. During the time the divorce was pending, Steve paid for all of the bills and all of the household expenses.

Steve testified that Lillian did not contribute to household expenses such as mortgage, association dues, cable, Commonwealth Edison, home repairs, and groceries. He stated that, from the time she lost her job up until the time of trial, he wrote checks to her so that she could pay the bills and he further stated that he paid for "everything". When his first wife bought out his interest in their marital home, he realized a profit of $61,200. He deposited $40,000 in his checking account

and approximately $20,500 in his savings account, keeping approximately $700 for family entertainment. He stated that he added Lillian's name to both accounts around August 2003, but that she never contributed any funds to either account.

In 1993 Steve and Lillian together bought a townhouse in Algonquin, Illinois. The purchase price was $119,935. At the time of trial, in June 2008, there was a mortgage on the townhouse with an outstanding balance of $89,000. Lillian testified that in her opinion the fair market value was $184,000, while Steve testified that in his opinion the fair market value was $150,000. Both parties testified that they based their respective opinions on the comparative market analysis prepared by a licensed realtor working for RE/MAX Unlimited Northwest. This analysis compared three town homes of like age and living space located in the same subdivision. One of the townhouses had been sold for $154,900. The other two townhouses were listed for sale with asking prices of $187,500 and $176,900; neither had sold at the time of trial. Lillian acknowledged that the two unsold homes had been on the market for over three months, and that the market value of their townhouse was possibly affected by the housing market slump.

Lillian testified that during her employment at Chicago Faucet, from approximately 1979 through 2005, she had a 401K plan that she rolled over into the Fidelity Investment IRA when she was laid off. Lillian stated that at the time of the marriage in 1997 the 401K plan was worth "only 20,000". The Fidelity Investment IRA plan was worth $42,698.50 as of the date of trial. She also stated that she has a "Defined Benefit Plan" that will provide a monthly payment of $1,401 per month when she reaches the age of 62.

According to Lillian, Steve owned a Chicago Faucet Company retirement savings plan, valued at $239,570.20 as of the date of trial. She testified that Steve had worked at Chicago Faucet since

1971. She further stated that in June 1997, two months after they were married, there was $54, 817.71 in his 401K account.

The evidence established that Steve was paying $225 per month to his ex-wife from a prior marriage, even though the three children from that marriage were emancipated. This amount was deducted from Steve's gross income in order to calculate his net income for purposes of child support.

The parties' 17-year-old son, Stephen, was a high school junior at the time of trial. Both parties agreed that Stephen had Attention Deficit Disorder (ADD) and Obsessive Compulsive Disorder (OCD). Stephen was seeing a psychiatrist and was taking three prescribed medications. The GAL asked Lillian about the term "Asperger's" [syndrome], and Lillian testified that it had been "used" in relation to Stephen. Lillian described the types of problems encountered by individuals with Asperger's syndrome. Steve testified that Stephen was under a psychiatrist's care and that he "doesn't think Stephen suffers from Asperger's [sic]". Steve testified that he did not know whether Stephen was entitled to receive educational services from the school district beyond high school.

On June 26, 2008, the record indicates that the trial court conducted an in camera interview with Stephen. There is no transcript of that interview, although beforehand the trial court told the parties on the record that it would "take a break here, go over the questions you have, track us down a court reporter and as soon as we have everything in place we will give you a call to come back". There is an undated typewritten note marked "Exhibit 3" which reads;

"A statement of how (Stephen Avello) see this divorce outcome

To whom it may concern;

This divorce outcome is not how I would have liked it. As you can tell I have a very close relationship wit [sic] my dad. The way I see it, the courts [sic] did not understand what I meant in our meeting. I was wanting my dad to have custody of me, [sic] This must be changed because

I want to live with my dad. I have no idea how a court of your starchier [sic] could rule in such an unorthodox manner. I am writing this to reiterate how upset I am on the courts [sic] ruling. And to state that I want to live with my dad. If I a m [sic] forced to live with my mom, there will undoubtedly be trouble.

Thank you for hearing my voice. *Avello* [sic]"

Below "Avello" there is an illegible signature that presumably is Stephen Avello's.

Guardian Ad Litem Karen Mensching (GAL) filed a preliminary report on August 9, 2006; an interim report on November 15, 2007; and after the trial court interviewed Stephen, a final report on June 30, 2008. In her interim report, the GAL stated that the items of highest priority regarding the best interests of Stephen were that he continue as a student at the high school he had previously attended and that Stephen continue to be monitored by a psychiatrist in order to monitor and adjust his medications. Also included were her concerns that there was no evidence that the parents could work together for Stephen's benefit; no evidence that the parents had presented plans for the future involving Stephen as to where they would live in relation to his school; no evidence that either was encouraging a good relationship between Stephen and the other parent; and no evidence that Stephen's needs were a high priority between the adult parties. Her final recommendation was that sole custody of Stephen be awarded to Lillian.

At the trial, Mensching testified that Steve "did not seem to be as understanding as to the fact that when Stephen scratched his hands raw, it was not just a question of dry skin. He did not seem to understand the importance of socialization when that was one of the concerns that the social worker from the middle school had expressed to be very, very important." She went on to state that "things have changed as Stephen has gotten older" but that Stephen still had educational problems that needed to be addressed. She stated that, early in her discussions with Stephen, he told her that

Lillian had exhibited angry outbursts, but she further stated that "in later discussions it never came up again". She stated that when she asked Stephen how things were, "he never volunteered that there were those kinds of incidents again."

The GAL further testified that, at an early age, Stephen developed a close relationship with his maternal uncle, Nick Avello, when Lillian's mother (Stephen's grandmother) babysat him while Lillian and Steve both went to work at Chicago Faucet. The preliminary report, filed August 9, 2006, stated: "I believe Nick to be one of the few people involved with Stephen who really has a handle on the situation and can meet Stephen's physical, emotional, social, and educational needs." She went on to describe what Nick told her about Steve's relationship with Stephen, which he characterized as "distant". Nick also told her that it had been Nick himself who took Stephen swimming and introduced him to hiking. She stated: "This is the first time I learned that Stephen had basically been home alone, on his own, in the house, the last three summers at least." Neither the interim report, filed on November 15, 2007, nor the final report, filed on June 30, 2008, mentioned Nick.

The trial court found that $42,700 of the $55,000 withdrawn by Lillian was included in the marital estate and chargeable to Lillian's portion thereof. The trial court further found that "the balance of $12,300 was used for daily living expenses by [Lillian]".

On December 10, 2008, the trial court entered a judgment of dissolution of marriage. Sole custody of Stephen Avello was awarded to Lillian. Steve was ordered to pay Lillian $700 in child support per month, payable by wage withholding order. Steve was further ordered to maintain health insurance coverage for Stephen and to pay all required out-of-pocket expenses for Stephen's health care. He was also ordered to pay for all of Stephen's extracurricular and school expenses.

The trial court ordered Steve to pay $940 per month in maintenance to Lillian for nine years, until the year 2017. This sum was reviewable on December 31, 2013.

In its findings, the trial court valued the marital residence at $187,020 minus the mortgage balance of $89,000 for a net value of $98,020. It awarded $58,000 of the net equity to Lillian, ordering Steve to either buy out Lillian's interest for $58,000 within 90 days, or to place the house on the market and convey to her 60% of the net equity or $58,000, whichever was greater.

Lillian received 100% of her Fidelity IRA and 100% of her IAM National Pension Plan, which she acquired during her employment at Chicago Faucet. In its findings, the trial court referred to "marital and non-marital portion[s]" of Lillian's IRA and Pension Plan, but there was no finding as to apportionment between marital and non-marital. The joint bank account had a remaining balance of $46,450.09, of which $5,870.00 was awarded to Lillian, with Steve keeping the balance.

II. ANALYSIS

A. CUSTODY

Determining custody in a particular case is a matter that rests within the sound discretion of the trial court. In re Custody of Sussenbach, 108 Ill.2d 489, 498 (1985); In re Marriage of Ricketts, 329 Ill. App.3d 173, 177 (2002). An abuse of discretion will be found only where it can be said that no reasonable person would adopt the view taken by the trial court. In re Marriage of Samardzija, 365 Ill. App. 3d 702, 709 (2006). The trial court's custody determination is afforded "great deference" because the trial court is at a superior vantage point to judge the credibility of the witnesses and determine the best interest of the child. In re Marriage of Bates, 212 Ill.2d 489, 516 (2004); In re Marriage of Karonis, 296 Ill. App.3d 86, 88 (1998), 296 Ill. App.3d at 88. A custody determination inevitably rests on the parties' temperaments, personalities, and capabilities and the witnesses' demeanor. In re Marriage of Wolff, 355 Ill. App.3d 403, 413 (2005). This court has inferred from the custody statute that joint custody can only succeed where the parents have an ability

"to cooperate effectively and consistently with each other towards the best interest of the child" 750 ILCS 5/602.1(c)(1) (West 1992); Ricketts, 329 Ill. App.3d at 173.

Section 602 (a)of the Illinois Marriage and Dissolution of Marriage Act (the Act) requires that the court determine custody in accordance with the best interests of the child, considering all the relevant factors, including: (1) the parents' wishes regarding the child's custody; (2) the child's wishes, if appropriate; (3) the child's interaction and interrelationship with his parents, siblings, and any other person who might significantly affect the child's best interests; (4) the child's adjustment to his home, school, and community; (5) the mental and physical health of all the individuals involved; (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or another person; (7) the occurrence of ongoing abuse; and (8) each parent's willingness and ability to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602(a) (West 2006). The factors enumerated in section 602(a) are not exclusive. In re Marriage of Martins, 269 Ill. App.3d 380, 389 (1995).

In a custody dispute, the primary consideration is the best interest and welfare of the child. 750 ILCS 5/602 (West 2004). The factual findings upon which a decision regarding child custody is based will not be disturbed on appeal unless it is against the manifest weight of the evidence. In re Marriage of Petraitis, 263 Ill. App.3d 1022, 1031 (1993). A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence. Karonis, 296 Ill. App.3d at 88. In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. In re Marriage of Divelbiss, 308 Ill. App.3d 198, 206 (1999). Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the trial court's order. Divelbiss, 308 Ill.

App.3d at 206-07. We will affirm the trial court's ruling if there is any basis to support the trial court's findings. Divelbiss, 308 Ill. App.3d at 207. There is a strong and compelling presumption that the trial court, the entity closest to the litigation, has made the proper custody decision. In re Marriage of Diehl, 221 Ill. App.3d 410, 424 (1991).

In his brief, Steve enumerates the section 602 factors and discusses each in relation to the facts presented here, and he concludes that "[c]onsidering all the relevant factors, custody of Stephen should have been awarded to Steve."

In her final report, the Guardian Ad Litem recommended sole custody be awarded to Lillian, pointing out that Steve had control issues. She opined that by entering a sole custody judgment in favor of Lillian, the trial court could give some means to counter the types of things that had happened previously, such as Steve's unilateral decisions regarding major purchases of items for Stephen, Steve's criticisms of Lillian to Stephen, and Lillian's inability to assert herself in a meaningful way. Her report stated "It is only with the Court's empowerment that Lillian will have anything to say about decisions regarding Steven [sic]."

Citing Wycoff, 266 Ill. App. 3d at 413, Steve avers in his brief "Where a child indicates a stronger attachment to one parent, that attachment ought to be respected". Steve contends that "Stephen's wishes to remain with his father are also based on his and his father's close relationship." A closer examination of the facts in Wycoff is instructive. Six years after the marriage had terminated and physical custody of the three-year-old daughter was awarded to the mother, the father petitioned for sole custody because the mother intended to remarry and move to a different town within Illinois. The Fourth District appellate court, in a plurality decision, reversed the trial court's termination of joint custody with physical custody with the mother, and its subsequent award of sole custody to the father. While stating: "Stability for the child is the major consideration", the Wycoff court pointed

out that "in section 602 cases the child has often spent most of his life with both parents, neither has any advantage over the other, and the trial court cannot make a mistake wherever custody is placed." Wycoff, 266 Ill. App 3d at 414. The Wycoff court went on to observe that "the statute does not require the child to give a good reason for his preference", but a court could find that a child's expressed preference for one parent over another is not necessarily in his best interest.

Further, "courts must be alert for situations where parents have attempted to influence the statements made by a child." Wycoff, 266 Ill. App 3d at 414. Even though Stephen was a junior in high school by the time of trial, the evidence established that, during the two years of litigation, Steve had given fifteen-year-old Stephen a Dell desktop computer, a laptop computer, an ipod, an electric guitar, an acoustic guitar, an electronic drumset, a cellphone, a new puppy, and a new car[2]. Similar to Wycoff, in this case the factors identified by the guardian ad litem demonstrate that deferring to Stephen's wishes would not necessarily be in his best interests. For that reason, despite the note expressing Stephen's wishes, we determine the trial court's refusal to defer to his preference was not an abuse of discretion. .

Finally, Steve's claim regarding the lack of a transcript of the trial court's in camera interview with Stephen is forfeited because it was raised for the first time in his reply brief. Steve attempts to bolster his argument that "the trial court did not give considerable weight to Stephen's preferences" by claiming that "[a] transcript of the in camera interview might have shed light on why Stephen's preferences were given little or no weight." An appellant forfeits all points he or she has not argued in the original brief, and may not raise new points in the reply brief. 210 Ill. 2d R. 341(h)(7). Further,

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[2] The evidence established that the car, a 2008 Mazda 3, purchased by Steve Kalisz for Stephen Avello was intended to be a gift to Stephen when he turned sixteen and obtained his license.

Steve's claim lacks merit. Although it is error to fail to record an in camera interview, the error is harmless where there is ample evidence in the record to provide a means of determining whether the trial court's decision was an abuse of discretion. See In re Marriage of Slavenas, 139 Ill. App. 3d 581, 586 (1985).

As the court in In re Marriage of Marsh, 343 Ill. App. 3d 1235 (2003) observed: "The teenage years can be difficult even in the most stable families and under the best of circumstances. Making the right custody decision for a troubled teen requires more sensitivity than review of a cold record affords, and where the emotional well-being of a youth is at stake, we are particularly reluctant to second-guess the trial court." Marsh, 343 Ill. App. 3d at 1241. Under these circumstances, we conclude the trial court did not abuse its discretion in awarding sole custody to Lillian.

B. Valuation of Marital Residence

The trial court's valuation of marital assets is a question of fact and will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. In re Marriage of Wojcik, 362 Ill. App.3d 144, 152 (2005); In re Marriage of Tietz, 238 Ill. App. 3d 965 (1992). Valuation of assets is made as of the date the judgment of dissolution is entered. In re Marriage of Awan, 388 Ill. App. 3d 204 (2009).

Steve estimated the value of the home at $150,000; he stated that he based his opinion on the market analysis of three similar townhomes. At the time of trial, only one of the townhomes had been sold, for $154,900. The other two townhomes, one of which was listed at $187,500 and the other at $176,900, had been on the market for over 90 days. In her brief, Lillian points out that her competent testimony established that since Lillian and Steve purchased the home in 1994, the neighborhood and surrounding area had been residentially and commercially developed, thereby contributing to an increase in value. At trial, Lillian estimated the value of the townhome at

$184,000, but also admitted that "possibly" the price of the home could have been affected by the current housing market slump. Lillian's testimony on this point is pure speculation. While market analyses based on listing prices rather than sale prices are sometimes used in this type of valuation, they are not as persuasive as those based only on selling prices for similar properties. Steve's estimate, although lower than all three properties in the analysis, is at least closer to the actual selling price of $154,900 of the one townhome that had been sold.

Lillian points out that prior to trial the parties stipulated to the admission of certain exhibits, and avers that "this is a 100 percent stipulated financial documentary evidence case". She specifically refers us to the McHenry County Assessment Notice for 2007, her Exhibit 8, which does not appear in the record. She contends that the trial court multiplied the assessed value shown on the tax bill by three to arrive at the valuation amount of $187,020 ($62,340 x 3 = 187,020). She then cites to In re Marriage of Malters, 133 Ill. App. 3d 168 (1985), where the trial court's valuation of a piece of real estate was reversed ("Since there appears to be no evidence to support the trial court's conclusion, such determination of value was error." Malters, 133 Ill. App. 3d at 181). Malters does not support her contention; if anything, it undermines her argument that there was enough evidence to support the trial court's valuation figure.

After finding that the marital residence was valued at $187,020, (the higher value rather than the lower value claimed by the parties) the trial court ordered Steve to either buy out Lillian's interest for $58,000 within 90 days, or place the house on the market and convey 60% of the net equity or $58,000, whichever is greater.[3] Should the townhome be sold at a price that is more realistic than

[3] The $58,000 figure is slightly more than 59% of the trial court's valuation figure minus $89,000, which was the outstanding mortgage balance owed by the parties at the time of trial.

the computation based on the assessed value in 2007, Steve faces a significant deviation from the 60/40 split that the trial court seemed to be putting in place. Likewise, if Steve chooses to buy out Lillian at the $58,000 figure, and the market value of the home has dropped significantly, he faces an equally disproportionate division of the equity in the marital residence. We believe the trial court should have ordered that Steve should convey 60% of the net equity or $58,000, whichever is *less*.

The formula ordered by the court places the burden on Stephen, should he actually be correct in his estimate that the property was adversely affected by the housing slump, while benefitting Lillian even as she was wrong about the value. We vacate the trial court's valuation and apportionment of the equity in the marital residence and remand the cause for a new valuation and apportionment.

C. Dissipation of Assets

In a dissolution of marriage proceeding, the Act requires a court to divide marital property in just proportions, considering all relevant factors, including "the dissipation by each party of the marital or non-marital property." 750 ILCS 5/503(d)(2) (West 2006). In re Marriage of Berger, 357 Ill. App.3d 651 (2005). Section 503(d) of Act lists the relevant factors a trial court should consider in determining how to distribute marital property in a dissolution proceeding. See 750 ILCS 5/503(d) (West 2006).

Dissipation is "a spouse's use of marital property for his or her sole benefit for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." In re Marriage of Hubbs, 363 Ill. App. 3d 696, 700 (2006). The issue of dissipation is generally a question of fact, and the trial court's finding concerning dissipation will not be disturbed unless it is against the manifest weight of the evidence. In re Marriage of Awan, 388 Ill. App.3d 204 (2009); In re Marriage of Vancura, 356 Ill. App. 3d 200, 204 (2005). "The spouse charged with dissipation of marital funds has the burden of showing, by clear and specific evidence, how the marital funds

were spent." Tietz 238 Ill. App. 3d at 983. General and vague statements that funds were spent to pay bills or on other marital expenses are inadequate; if the expenditures are not documented adequately by the party charged with dissipation, we will affirm a finding of dissipation. Tietz 238 Ill. App. 3d at 984.

Steve contends that the trial court erred in charging only $42,700 in attorney and other legal fees against Lillian's share of the marital estate.[4] He argues that although Lillian testified that she spent the remaining $12,300 from the $55,000 withdrawal on living expenses, she provided receipts and documentation adding up to only $3,000. In other words, according to Steve, she should have had an additional $9,300 charged against her portion of the marital estate.

Lillian responds that the trial court record "is completely devoid of the dissipation issue". She contends, therefore, that the dissipation issue was forfeited. She further argues that Steve's dissipation argument is a "complete misinterpretation of dissipation as that term is defined under the current status of Illinois law."

That the marriage was undergoing an irreconcilable breakdown is evident from the fact that Lillian filed her petition for dissolution of the marriage on May 12, 2006. As characterized by Lillian's argument, the uncontroverted evidence established that Lillian withdrew $55,000 from the parties' joint bank accounts within a day of filing a petition for dissolution of the marriage. Far from being "baseless or purely speculative", this was prima facie evidence of dissipation.

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[4] In its findings, the trial court stated "[Lillian] used $42,700 towards her attorney fees and costs, Guardian ad Litem fees, and mediation fees. The balance of $12,300 was used for daily living expenses by [Lillian]. The $42,700 should be included and chargeable to [Lillian]'s portion of the marital estate."

After a prima facie case of dissipation has been established, the burden of proof is on the party charged with dissipation to show by clear and convincing evidence that she spent the funds on legitimate family expenses, or for necessary and appropriate purposes. Hubbs, 363 Ill. App. 3d at 700. At trial the parties litigated the issue of Lillian's expenditures.

The plain language of section 501(c-1)(2) of the Act requires the trial court to treat the parties' attorney fees as advances, "[u]nless otherwise ordered." 750 ILCS 5/501(c-1)(2) (West 2006); see also In re Marriage of Beyer, 324 Ill. App.3d 305, 314 (2001) (noting that section 501(c-1)(2) creates a presumption that attorney fees will be treated as advances, but that the presumption does not apply where the court orders otherwise). Although Steve characterizes the trial court's treatment of Lillian's attorney fees of $42,700 as dissipation, the trial court found it was an advance from the marital estate, chargeable to Lillian's share.

The balance of $12,300 then becomes the issue. Lillian did produce receipts for medications, hospital bills and car repairs, adding up to approximately $3,000. When she testified that she used the remaining $9,300 for living expenses, she stated that she had documentation supporting the expenditures in the form of her checkbook register. However, even though the burden was on her to explain the expenditure of $9,300, the checkbook register was not in evidence, nor did her testimony adequately explain how the money was spent. In its findings, the trial court simply rounded the figures that were testified to by Lillian, and concluded that Lillian spent $12,300 for daily living expenses.

In In re Marriage of Berger, 357 Ill. App. 3d 651 (2005), the wife testified that she used money she withdrew from bank accounts held jointly with her husband "to pay living expenses, take her daughter on a trip to Europe, and purchase new items for her new home." Berger, 357 Ill. App. 3d at 662. This statement that the money was used for living expenses was too general and vague

to prove that the funds were spent on marital expenses, and thus the trial court's finding that she dissipated marital funds when she made the withdrawals from the joint accounts was affirmed. Similarly, here Lillian's statements were vague and general as to the expenses she claimed.

We find that the manifest weight of the evidence in this case does not support the court's determination that the entire $12,300 was spent on living expenses, and, therefore, we find the amount of dissipation should be $52,700 ($42,700 plus $9,300). On remand, the trial court may consider the new amount of dissipation in its new judgment regarding the distribution of the property.

D. Distribution of Marital Assets

Steve contends that the trial court erred in its distribution of the marital assets, and asks that "the marital and non-marital portions of the parties' retirement accounts be properly calculated and that the marital portions of both parties' accounts be taken into account in the distribution." He also asks that the parties' joint bank accounts be "split fairly", taking into account the amount of dissipation by Lillian. As with maintenance awards, decisions concerning the distribution of marital property lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. In re Marriage of Joynt, 375 Ill. App.3d 817, 822 (2007).

Section 503 of the Act governs the distribution of marital property and directs courts to consider various factors and distribute marital property to the spouses "in just proportions". 750 ILCS 5/503(d) (West 2006). These factors include:

> "(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including the contribution of a spouse as a homemaker or to the family unit;
>
> (2) the dissipation by each party of the marital or non-marital property;
>
> (3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2006).

The Act does not require mathematical equality of distribution; rather, it must be equitable. In re Marriage of Drury, 317 Ill. App. 3d 201, 211(2000). Sometimes, according the circumstances of the case, an unequal division of marital property is the appropriate solution, as long as it can be considered equitable. In re Marriage of Heroy, 385 Ill. App.3d 640 (2008).

We agree with Steve that Lillian has misstated his argument about the joint accounts. As he points out, he acknowledges that the marital and non-marital funds were commingled in the joint accounts and therefore are marital property. However, section 503 (d)(1) of the Act refers to "the contribution of each party to the acquisition, preservation, or increase or decrease in value of the

marital or nonmarital property *** ". 750 ILCS 5/503(d)(1) (West 2006). The evidence established that Steve did contribute all of the funds in the joint accounts.

Next, the Act refers to "the dissipation by each party of the marital or non-marital property" as a factor. 750 ILCS 5/503(d)(2) (West 2006). As we pointed out previously, the evidence did not support the trial court's finding that Lillian spent all of the excess funds she withdrew from the parties' joint accounts on living expenses.

Lillian's testimony also established that when she reaches the age of 62, she will receive a monthly payment of $1,401 per month from a "Defined Benefit Plan". This future income should be considered as a reasonable opportunity for her future acquisition of income, as defined by the Act. 750 ILCS 5/503(d) (West 2006).

Another factor is "whether the apportionment is in lieu of or in addition to maintenance". 750 ILCS 5/503(d)(10) (West 2006). Since we are remanding this matter for evaluation of the marital home, and the amount and duration of the maintenance award are substantial (see below), the trial court should reconsider the totality of the apportionment.

Of particular concern to us is the amount of the assignment of the IRA holdings. In its findings the trial court recognized that portions of each parties' pension plans and IRA's were both marital and non-marital. The trial court then awarded 60% of the marital portion of Steve's 401(k) retirement account to Lillian. On the other hand, the trial court awarded 100% of Lillian's IRA to her without any computation as to what portion of this account should be considered marital.

> "The amount of the pension or profit sharing interest included as marital property would *** be the present value of the interest multiplied by a fraction whose numerator is the number of years (or months) of marriage during which benefits were being accumulated, and whose denominator is the total number of years (or months) during which benefits were accumulated

prior to divorce. Once the trial court has determined the present value of that part of the pension or profit sharing interest which is marital property, the trial court may award the interest to the employee spouse and give the non-employee spouse other marital property to offset her marital share in the interest." In re Marriage of Hunt, 78 Ill. App. 3d 653, 663 (1979).

In this case, Steve was employed at Chicago Faucet since 1971; Lillian was employed there from 1979 through 2005. The marriage occurred in 1997. Even though the trial court in this case determined that there were marital and non-marital portions, there are no findings made as to the division of these portions; the percentages in the judgment are of the entire accounts rather than percentages after determining the marital and non-marital portions of these accounts. Thus, the record is unclear as to what apportionment of marital property was being made by the trial court's judgment. Therefore, we are unable to determine whether the distributions were fair and equitable. However, because we are remanding for further proceedings, we vacate the distribution of the marital assets without determining the merits of the amounts awarded in this category. At that time the trial court may clarify its findings as to apportionment and distribution of the retirement accounts.

E. Maintenance Award

The trial court awarded maintenance of $940 per month for nine years, subject to review after five years. Section 504 of the Act outlines the factors to be considered by the trial court in making such an award. 750 ILCS 5/504 (West 2006). Steve challenges both the amount of the monthly maintenance and the length of time that he is required to pay.

"[T]he propriety of a maintenance award is within the discretion of the trial court and the court's decision will not be disturbed absent an abuse of discretion. [Citation.] A trial court abuses its discretion only where no reasonable person would take the view adopted by

the trial court. [Citation.] Moreover, the burden is on the party seeking reversal concerning maintenance to show an abuse of discretion." In re Marriage of Schneider, 214 Ill.2d 152, 173 (2005).

Steve raises several issues concerning the trial court's initial maintenance award. He contends that in view of the "substantial" marital assets awarded to Lillian, an award of $940 per month in maintenance for nine years was an abuse of discretion.

Section 504(a) of the Act permits a trial court to grant maintenance to a dependent former spouse in amounts and for periods of time as the court deems just after considering all the relevant circumstances of the parties. 750 ILCS 5/504(a) (West 2006); In re Marriage of Brackett, 309 Ill. App.3d 329, 340 (1999). "Relevant circumstances" include the marital property apportioned to each party. Brackett, 309 Ill. App.3d at 342. Because we are remanding this case for the redistribution of marital property, the maintenance award also should be reconsidered in the context of a new property distribution. In light of our earlier determinations of error in the valuation and apportionment of the marital residence, dissipation on Lillian's part, and the determination and distribution of assets, we vacate the maintenance order. The court shall reconsider maintenance along with the other matters also remanded for a new hearing relating to the division of the marital estate.

Affirmed in part and vacated in part; cause remanded.

McLAREN, J., with ZENOFF, P.J., and SCHOSTOK, J., concurring.