2012 IL App (2d) 110446-U
No. 2—11—0446
Order filed August 15, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHELLE APPELBAUM,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellant,	)	
	)	No. 08 D 922
v.	)	
WILLIAM APPELBAUM,	)	Honorable George Strickland
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court's order setting taxable maintenance for the appellant at $9,000 per month was not an abuse of discretion since: (1) $20,000 per year of income could be imputed to the wife; (2) the trial court properly weighed the relevant statutory factors in determining maintenance; and (3) the trial's court's determination of husband's average adjusted gross income over a five-year period was not against the manifest weight of the evidence. Also, the trial court did not err in ordering husband to pay 82.1 percent of wife's attorneys' fees, which left wife responsible to pay remaining $53,000 of her own fees.

¶ 1 On January 19, 2011, the trial court entered a judgment dissolving the marriage between the appellant, Michelle Appelbaum, and the appellee, William Appelbaum. On appeal, Michelle argues that the trial court erred in: (1) awarding her only $9,000 per month in taxable maintenance; and (2) ordering her to pay $53,000 toward her attorneys' fees. For the following reasons, we affirm.

¶ 2 I. FACTS

¶ 3 The parties were married on February 9, 1991. They have a son, J.A., born on March 25, 1994, and a daughter, S.A. born on July 17, 1995. On May 2, 2008, Michelle filed a petition for dissolution. On July 15, 2008, a temporary support order was entered awarding Michelle $11,000 per month in temporary maintenance and support. William was also required to pay additional expenses in the amount of $8,938 on Michelle's behalf.

¶ 4 A. Michelle's Temporary Financial Affidavit, the Joint Parenting Agreement

¶ 5 & Marital Settlement Agreement

¶ 6 In July 2008, Michelle filed a "Preliminary Financial Affidavit 11.02". In the affidavit, Michelle listed her personal and home-related expenses. On July 15, 2008, the trial court, after conducting an evidentiary hearing on Michelle's petition for temporary maintenance and child support, entered the following order:

¶ 7 "The court find Michelle's 11.02 affidavit is credible but finds that the amounts requested for maid service, miscellaneous expenses (4(a)) and gifts shall not be awarded in their entirety."

In the affidavit, maid service was listed as $1,430 per month (3 times a week at $110/visit). Section 4a of the affidavit listed expenses for entertainment ($2,997 per month), newspapers, magazines,

books ($75 per month), gifts ($1,500 per month), donations ($450 per month), vacations ($1,754 per month), health clubs ($123 per month), personal trainer ($823 per month).

¶ 8 On July 8, 2009, the parties entered into a Joint Parenting Agreement. In the agreement, they agreed to split the custody of their children. William received sole custody of their 15-year-old son, J.A., and Michelle received sole custody of their 13-year-old daughter, S.A.

¶ 9 On January 21, 2010, the Marriage Settlement Agreement was executed. In that agreement, the parties divided up their property, and William was ordered to pay child support for S.A. which was equal to 13 percent of William's net income up to $250,000, with the amount reserved for trial. William was solely responsible for J.A.'s support and Michelle was not required to provide child support for her son. William was ordered to pay all of the children's medical expenses, summer camps and the children's college educations to the extent that their assets were insufficient. The parties agreed that maintenance would be reviewable in 2016, and the current amount of maintenance was reserved for determination at trial.

¶ 10 With regard to division of property, Michelle was awarded the following: (1) sole ownership of the former martial residence, located at 159 Pierce Road, Highland Park, Illinois (Pierce Road residence); (2) a non taxable property payment in the amount of $350,000; (3) her checking account; (4) a 2003 Mercedes station wagon; and (5) certain personal property.

¶ 11 William was awarded the following pursuant to the Marriage Settlement Agreement: (1) the residence located at 1213 Glencoe Avenue, Highland Park, Illinois (Glencoe Avenue residence); (2) his interest in his company, World Wide Shrimp (WWS); (3) his interest in Silver Stone Ranch, LLC; (4) his checking and savings accounts; (5) a 2005 Suburban; (6) a 2005 Durango; (7) a Northwest Mutual Term life insurance policy; and (8) certain personal property.

¶ 12 B. Deposition Evidence & Trial Testimony

¶ 13 On June 17, 2009, a discovery deposition was taken of Dr. James Grober, Michelle's rheumatologist. The parties stipulated to Dr. Grober's deposition testimony being admitted at trial as an evidence deposition. In his deposition, Dr. Grober testified that he had treated Michelle since the mid to late 1990s. Initially, he diagnosed her with Systemic Lupus Erythematosus. According to Dr. Grober, however, sometime probably before 2003 he changed Michelle's diagnosis to Undifferentiated Connective Tissue Disorder (UCTD) because Michelle was missing some of the markers associated with lupus. UCTD is a more mild condition with a less severe prognosis, but the treatments for both ailments are the same. UCTD simply denotes a milder condition with a less worrisome prognosis. In his opinion, there was a low likelihood that Michelle's condition will change for the better or for the worse.

¶ 14 Dr. Grober has prescribed Prednisone, Azathioprin, Hydroxychloroquine and Quinacrine for Michelle to keep her condition under control. Michelle had only complained to him regarding flare-ups on average of once per year, and sometimes only once every couple of years. However, he said that Michelle had mentioned to him that there were times when she had flare-ups but did not make an appointment with him. When Michelle did contact him regarding a flare-up, the treatment Dr. Grober prescribed was to get more rest, and sometimes he increased her Prednisone dosage. His main recommendation to Michelle was to avoid sun exposure and balance rest and activity. He had advised Michelle to exercise regularly, but said that there was not a specific reason why exercise was more important to someone suffering from UCTD as opposed to anyone else. Dr. Grober also said that there was no reason that someone with UCTD would need a personal trainer. When asked whether there was anything that prevented Michelle from holding a job, he said that it would depend

upon the nature of the job duties, and whether her disease is under control and not in the flare-up stage. Dr. Grober also said that Michelle did not need more rest than the average person, instead, she just needed to consistently get 7 to 9 hours of sleep per night.

¶ 15 On June 18, 2009, the discovery deposition of Dr. Kenneth Breger, Michelle's internist, was taken. That deposition was also admitted into evidence by stipulation as if it were an evidence deposition. Dr. Breger recommended that Michelle get regular aerobic exercise, and to engage in weight training. Dr. Breger believed that it was important to follow a regular exercise routine to keep her immune system healthy because a weakening of her immune system could cause a flare-up. He also recommended weight training to strengthen Michelle's muscles, tendons and ligaments around her inflamed joints. However, Dr. Breger said that he deferred to Dr. Grober with regard to Michelle's condition. Dr. Breger said that, in his opinion, Michelle did not have any medical condition that would prevent her from being employed full-time.

¶ 16 The trial in this case spanned from July 2009 until May 2010. At trial, Michelle testified that she was 43 years old, and that she had a bachelors degree in psychology from Southern Methodist University as well as a master's degree in counseling from Indiana University. She was last employed in 1994 as a youth worker at Northbrook Glenview Work Services where she was employed for less than two years. Michelle did not recall her salary, but believed that it may have been $12,000. She has not been employed since that time.

¶ 17 Michelle testified that she has systemic lupus which causes her to experience overall fatigue and mild achiness on a daily basis. According to Michelle, she and William had an elevator installed in the Pierce Street residence in 1999 because sometimes she would be too sick to walk up and down the stairs. In addition to the medications that Dr. Grober testified about, Michelle testified

that she also takes Plaquenil, Imuran, Arthrotec, Trazodone and Zoloft. According to Michelle, her condition prevents her from working. She said that on a typical day, she goes back to bed after she takes her daughter to school. It is best if she rests for an hour and a half per day. When she experiences a mild flare-up of her condition, it may require her to curtail her activities for a couple of days. When she has a major flare-up, however, it may require her to stay in bed, and it also may cause a secondary infection involving her kidney or bladder. Michelle said that she has about three major flare-ups of her condition per year that require an increase in medication.

¶ 18 During the parties' marriage they resided at the Pierce Street residence, which was valued at $787,500. At the time of trial, that residence was mortgage-free. In addition to the marital residence, in 2000 Michelle and William purchased Silver Stone Ranch, located in Elkhorn, Wisconsin. The ranch was comprised of almost 180 acres of land. They purchased Silver Stone Ranch for $1,000,050 and spent an additional $3,750,000 improving the land. The additional improvements included the construction of a seven bedroom house on the property that included, in addition to other amenities, an indoor swimming pool and a theater. William and Michelle purchased horses for the ranch and there is a barn on the property. They lived at Silver Stone Ranch on many weekends and holidays. The parties also took many vacations to locations such as the Cayman Islands and the Carribean.

¶ 19 Michelle testified about the parties' lifestyle. According to her, they spent $2,997 per month on clubs, social obligations and entertainment. They threw large parties at the Pierce Street residence or at Silver Stone Ranch. During the length of their marriage, they employed a housekeeper to clean their home weekly. They used a landscaping service to maintain their lawn, and, according to Michelle, it looked "like the Botanic Garden." Michelle said that during their marriage she spent

"much more" than $750 per month on clothing. She also spent $453 per month on her personal grooming, which included her haircuts and coloring, manicures, pedicures and makeup. Michelle also alleged that she spent $800 per month on gifts for family members.

¶ 20 Michelle said that she has been a member of Equinox Heal

¶ 21th Club for six years and spent $123 per month on membership dues. She also employed a personal trainer at the cost of $160 per week. Michelle said that her personal trainer has a degree in physical therapy and is very good at strengthening the muscles around her joints which cause her discomfort as a result of her lupus. She also spent $563 per month in therapy sessions.

¶ 22 William testified that he was 46 years old and in good health. In 1986, he earned a Master's degree from Southern Methodist University with an emphasis in small business and information systems. After earning his degrees, William worked for Penguin Frozen Foods (Penguin), a frozen food distributor owned by members of his family. He was fired from Penguin in 2001. In 2002 and 2003, he was unemployed and engaged in litigation with his family regarding Penguin.

¶ 23 In 2004, William and his cousin, John Appelbaum, created World Wide Shrimp (WWS), a frozen shrimp distribution company. William owns 42 percent of WWS. In 2004, William's adjusted gross income was $646,019. This total consisted of $485,176 of IRA distributions and $191,048 from the sale of Penguin stock.

¶ 24 In 2005, Williams adjusted gross income was $1,181,025. Of that amount, his W-2 income was $162,509, and his K-1[1] income from WWS was $97,588. The balance of the income – $881,615 – came from the sale of Penguin stock. Income on the sale was comprised of $62,986

[1]The Schedule K-1 is used to report income and other distributions from partnerships, S corporations and some estates and trusts. *IRS Offers Tips for Accurate Schedule K-1 Filing* (March 22, 2005), http://www.irs.gov/newsroom/article/0,,137027,00.html.

reported on Schedule D and $818,629 reported as installment sale income. Therefore, his non-recurring income for that year was $299,410.

¶ 25 William and Michelle's 2006 federal income tax returns indicate that William's adjusted gross income was $744,782 for that year. Of that amount, William claimed that $50,000 was an extra income payment to him as reimbursement for money he advanced to his business partner and cousin, John, for John's attorney's fees in the family litigation over the termination of their employment with Penquin. William's 2007 adjusted gross income was $1,048,328. Again, Williams claimed that of that amount, $250,000 constituted extra wages to reimburse him for the cost of paying John's attorney's fees in the Penguin litigation. Williams' adjusted gross income for 2008 was $366,161, and his adjusted gross income for 2009 was $376,414. Based upon these numbers, the average of William's five-year adjusted gross income for the years 2005 through 2009 was $743,342. If the non-recurring income generated in years 2005, 2006 and 2007 were not taken into consideration, however, William's average adjusted gross income for those years was $507,019.

¶ 26 In 2004, during its first partial year in operation, WWS generated approximately $11,000,000 in sales. In 2005, it generated $21,600,000 in sales. In 2006, WWS made $43,634,000 in sales, followed by $39,250,000 in 2007 and $44,777,000 in 2008. Richard Lies, Michelle's valuation expert, testified that WWS is a cyclical industry and that profits of WWS were significantly less in 2008 than 2007. In the second half of 2008, gross profit margins dropped from 6 to 8% in January through May to less than 2 to 3% over the remainder of the year. Margins in 2008 were 1.1% versus 3.2% in 2006 and 4.4% in 2007.

¶ 27 William testified that he had a $15,000,000 line of credit with Fifth Third Bank that he used to buy inventory. He could only borrow 85% of the value of his inventory and 75% of the value of

his accounts receivable pursuant to the covenants with the bank. Those ratios limit his ability to pay bonuses, or even pay out retained earnings, because using borrowed money to do so would violate his covenants with the bank. William said that following the entry of the temporary support order he took no quarterly bonuses until the last quarter of 2009. In 2009, he derived funds to pay bonuses by selling off inventory. At the end of 2009, his inventory was worth $5,000,000, which was $2,000,000 less than its worth at the end of 2008. WWS was not replacing inventory at the rate they were selling it because competitors were paying prices that were either "break-even" or losing money. William said that he met his temporary support obligations in 2009 by borrowing money from the lines of credit on the Silver Stone Ranch and on his Glencoe Avenue residence.

¶ 28 In 2008, William purchased the Glencoe Avenue residence for a little more than $1,000,000. William lived there with his girlfriend, Adriana Zukowska, and their child, who was born in 2008. William's girlfriend was the parties' former nanny. William fully supported both Ms. Zukowska and their child.

¶ 29 William's financial affidavit as of December 31, 2008, shows total liabilities of $2,056,354, which included $430,889 on Michelle's house (the Pierce Street residence), $250,000 on William's house (the Glencoe Avenue residence), and $1,355,000 on Silver Stone Ranch. His financial affidavit as of October 15, 2009, shows that he had paid off the loan on Michelle's house by increasing the debt on Silver Stone Ranch, and that his liabilities had still increased to $2,615,575, including $2,000,000 on Silver Stone Ranch and $530,000 on William's home. William testified that the cause of the increase was the maintenance and support, the attorneys fees both for both he and Michelle and his own expenses. He said that he could not afford to pay the funds required of him by the July 2008 temporary support order from his base income and bonus.

¶ 30 During his testimony in April 2010, Williams said that the loan against the Glencoe Avenue residence was up to $750,000, which was the limit of borrowing. The $2,000,000 equity loan against the Silverstone home was also at its limit. William owed $15,000 on his Citibank card and $6,000 on his Chase Mastercard. At that time, he had a contract for sale of his Highland Park residence, although it had not yet closed. He hoped to rent a house in Highland Park to keep the parties' son in the school district. He expected to use the sale proceeds to make his next installment payment of $35,000 to Michelle in July 2010 pursuant to the property settlement agreement and to continue making his temporary support payments.[2]

¶ 31 Within his financial affidavit William listed the expenses associated with the Pierce Street residence. The total expenses for that residence, which included, among other items, real estate taxes, homeowner's insurance, and utilities, was $3,628.16. In her brief on appeal, Michelle alleges that she historically spent $11,755 monthly for personal expenses and those related to the Pierce Street residence. Those expenses, specifically, were listed as follows:[3]

Expense	Monthly Amount
car insurance	$ 369
therapy	$ 563
pest control	$ 50
lawn, garden and snow removal	$ 152

[2] Shortly after William gave this testimony, the Highland Park residence closed. The closing statement was entered into evidence, and it indicated that William received $89,779 from the sale on April 13, 2010.

[3] The numbers reflected in Michelle's brief differ slightly from the costs listed on her financial affidavit that she filed in July 2008. The only two expenses that changed dramatically from her financial affidavit was the maid and cleaning cost, which went from $1,430 to $400 per month, and her personal trainer, which went from $823 to $688 per month.

food	$ 1,250
clubs, social obligations and entertainment	$ 2,997
vacations	$ 1,754
laundry and dry cleaning	$ 200
maid and cleaning	$ 400
medical insurance	$ 569
gifts	$ 800
personal grooming	$ 425
clothing	$ 750
furniture and appliance repair and replacement	$ 200
Equinox Health Club	$ 123
pet care costs	$ 465
personal trainer	$ 688
Total Expenses	$11,755.00

¶ 32 C. Attorney's Fees

¶ 33 Michelle tendered into evidence exhibit 107(D), which was a list prepared by William showing the litigation expenses he had paid so far, which totaled $413,885. Those fees included $20,837.10 paid to an attorney William hired before hiring his current counsel, and $15,198.70 to a Michelle's former counsel. Michelle's current attorneys were paid $135,000, of which $10,000 came from a tax refund, $16,000 came from Williams' personal account, and the remainder of which came from a Silver Stone account. Williams' attorneys were paid $129,578, of which $35,902 was put on a credit card, $26,000 came from his personal account, and the rest came from the Silver

Stone Ranch checking account, which William said were borrowed funds. Since the time the exhibit was compiled, William had paid his attorneys an additional $10,000. Finally, in the exhibit William indicated that had paid Michelle's valuation expert $7,500, and he had paid his accountant $25,756.52 in connection with this litigation.

¶ 34 D. Trial Court's Findings and Rulings

¶ 35 On October 27, 2010, the trial court issued its ruling. The court initially noted that it would comment on some but not all of the factors in support of its decisions. It then noted that, in determining the parties' credibility, it had examined their testimony, their demeanor on the witness stand, and the reasonableness of their testimony in light of all the evidence in this case.

¶ 36 The court found Michelle to be a credible witness but found that William was not a credible witness. It made this ruling based on Williams's demeanor and the unreasonableness of his testimony in light of all the evidence in the case. However, it noted that some of William's testimony was corroborated by other testimony. The court then found that both parties had made requests of the court that were "patently unreasonable." Specifically, the court made the following comment:

¶ 37 "There is a variable [sic] chasm which separates the demands of each litigant as it pertains to the various rulings which the court sets forth today. The court would guesstimate that the parties were somewhere between $700,000 and a million dollars off based upon the various different things that the court is to rule on and their positions. These gross disparities along with various personal attacks had render [sic] certain recommendations of the parties to be of little assistance to the court. To even closely grant either side relief in total would not only be grossly unjust but would certainly constitute clear error."

¶ 38 The court went on to say that prior to the extremely acrimonious break up of their marriage, William and Michelle lived a relatively luxurious lifestyle. However, shortly thereafter, the economy suffered a downturn, William started a new family, he still had obligations to Michelle and their children, and had a large monthly bill for Silver Stone Ranch. In addition, shortly after moving out of the marital home he bought a home for his new girlfriend for over a million dollars.

¶ 39 The court said that although William had continued to pour $8,000 a month into Silver Stone Ranch to hopefully turn it into a money making ranch, he instead turned it into an ultra expensive vacation location which was an immense drain on his resources. The court found that William had fabricated the status of the ranch both in person and through his attorneys. It also said William left the huge monthly expenditures at Silver Stone Ranch off his financial affidavit, which painted an extremely misleading picture of his monthly expenses.

¶ 40 While the court believed that William's income had gone down, it was not convinced that his portrayals of his income post filing of the divorce were accurate. He said that William lived a lifestyle far in excess of his stated income levels. However, he agreed with William that Michelle had never been able to identify the other income or assets with any certainty. The court said it surmised that his extravagant spending had been at least in part funded by his lines of credit on Silver Stone. The court agreed that the downturn in the economy would have contributed to William's lower income in the more recent years. With regard to WWS, the trial court said, "shrimp is hardly a luxury item and is a stable [sic] in the diets of many, purveyors of shrimp will continue to make money and no evidence has been received that shrimp will not return to sales levels that existed prior to the downturn." The court found that it could not reliably determine Williams' income and resources with any great certitude, however, the numbers based on William's tax returns could serve

as general trends. Further, William's history of declaring large year end bonuses and retaining income further clouded the situation. However, the court did accept William's explanation of the nature of certain non-recurring expenses between 2005 and 2007.[4]

¶ 41 The court cautioned both parties to not rely too much on its earlier findings from the temporary support hearing in 2008, since the information it had received at that time was preliminary. Also, because the court believed that William's income has somewhat diminished and circumstances have changed, the court found that Michelle's lifestyle was going to change, also.

¶ 42 The court then found that the current support level could not continue pursuant to law, and that it would average the last five years of William's income due to the large fluctuations in his income, the large shifts in the economy, and the court's overall inability to accurately set forth Williams's income over this time. It noted that Michelle claimed William's average income over this time period was $728,800, and William claimed it was $491,509. The court found that the current figure was actually between $550,000 to $600,000 per year.

¶ 43 With regard to maintenance, the court found that William was 47 years old, well educated, in good health and a successful business man with a history of high income earning. While William's income had been as high as $1,040,000, the court again noted that some of this income had been from non-recurring sources. The court found that Michelle was 43 years old, well educated and suffered from lupus or a connective tissue disorder, and she had not worked outside the home during the marriage. The court considered their marriage to have been long term. It found that Michelle had worked in the home and raised the parties' children, which greatly assisted William

[4]Although the court referred to non-recurring "expenses," it is clear from reading the trial court's comments in their entirety that the court was actually referring to William's non-recurring income, and not his expenses.

in his financial success. The court noted the parties prior lavish lifestyle, but it also found that Michelle's expenses for personal grooming, although relatively substantial historically, had increased during the divorce to a certain level.

¶ 44 The court noted that pursuant to the Marital Agreement, William had been awarded WWS, and his interest in that company was valued at between $1,100,000 and $1,600,000. The court found that WWS will produce substantial income in the future. It also noted that William was awarded Silver Stone Ranch, which was heavily in debt, and that Michelle received the marital home, which was mortgage-free and worth around $800,000, along with a number of lump sum payments from William totaling $350,000. The court also found that William had amassed a substantial amount of debt to pay for the temporary support order. The court found that Michelle possessed substantial liquidity and William had substantial debt, although some of that debt was caused by frivolous decision making. It also found that William had substantial resources to pay down that debt.

¶ 45 Regarding imputed income, the court found that based upon the medical testimony admitted at trial, Michelle did have an impairment which would have an effect on her ability to earn future income. However, the testimony offered did not establish that Michelle was disabled or could not work, and it found that Michelle would have time to pursue some employment. The court then weighed the following factors in determining the amount to be imputed: (1) Michelle was well educated and likely had connections in the community; (2) her degree was outdated and would not allow her to practice in Illinois; (3) she had not worked in many years; (4) she would have to be employed outside the focus of her education; and (5) she would be somewhat impaired by her physical condition. The court then imputed $20,000 per year in income to Michelle.

¶ 46 The court specifically noted that Michelle would have to curtail her spending since the level of resources which supported that lifestyle no longer existed. The court found that much of the amounts in Michelle's affidavits were "exorbitant and unsustainable." The court then ordered William to pay Michelle $9,000 per month in maintenance. Child support was calculated at $2,708 per month, which conformed to the marital settlement agreement by equating to 13 percent of $250,000. The trial court also awarded Michelle $30,000 of William's 2009 bonus. Finally, the court ordered William to pay $8,000 for S.A.'s camp expenses.

¶ 47 With respect to attorneys' fees, the court said that it had considered all of the evidence in this case as well as sections 503(j) and 508 (a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(j); 5/508(a) (West 2010). It noted that Michelle wanted William to pay $204,487.25 in fees, and that William had already paid $142,500 in fees and costs to Michelle thus far. Of that amount, $24,500 had come from joint funds. Also, the court held that some of Michelle's legal fees were excessive and disallowed $51,000 of those fees, which left approximately $153,000 in outstanding fees.

¶ 48 The court then found that William had repeatedly misled if not outright lied to the court about Silver Stone as well as his expenses and that these actions had greatly increased the costs of litigation. Therefore, the court ordered William to pay $100,000 of the remaining legal fees.

¶ 49 II. ANALYSIS

¶ 50 On appeal, Michelle contends that the trial court abused its discretion in two ways: (1) by awarding her only $9,000 per month in taxable maintenance; and (2) only ordering William to pay $100,000 of her remaining $153,000 in attorneys' fees.

¶ 51 A. Maintenance

¶ 52 Michelle argues that the trial court's order awarding her only $9,000 per month in taxable maintenance was an abuse of discretion because: (1) it was erroneous based on a finding that $20,000 per year in income should be imputed to her; and (2) the $9,000 amount reached by the trial court contravenes the trial court's express findings and the uncontroverted evidence admitted at trial.

¶ 53 Maintenance is designed to be rehabilitative and to allow a dependent spouse to become financially independent. *In re Marriage of Haas*, 215 Ill. App. 3d 959, 964 (1991). "Permanent maintenance, on the other hand, is appropriate where it is evident that the recipient spouse is either unemployable or employable only at an income that is substantially lower than the previous standard of living." *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 9 (quoting *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 303 (2005)).

¶ 54 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2010)) provides a court may grant permanent or temporary maintenance upon consideration of "all relevant factors," including:

> "(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 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."

¶ 55 Courts have wide latitude in considering what factors should be used in determining reasonable needs, and the trial court is not limited to the factors listed in the Act. *Brankin* at ¶ 10. "No one factor is determinative of the issue concerning the propriety of the maintenance award once it has been determined that an award is appropriate." *Murphy*, 359 Ill. App. 3d at 304. An award of maintenance is within the discretion of the trial court and will not be reversed on appeal unless it constitutes an abuse of discretion or is against the manifest weight

of the evidence. *In re Marriage of Hensley*, 210 Ill. App. 3d 1043 (1991). Further, when a trial court's factual findings regarding a maintenance determination are at issue, the findings are subject to reversal if they are against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010). Findings are "against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Id.*

¶ 56 1. Imputed Salary

¶ 57 Michelle first contends that the trial court's imputation of $20,000 in annual salary to her was against the manifest weight of the evidence. As support for her contention, Michelle argues that the evidence at trial clearly showed that she had never earned income as high as $20,000 per year, she was currently unemployed and had not worked outside the parties' home in 17 years, when she did work, she only earned around $12,000 per year, she cannot practice counseling in Illinois, and her lupus prevents her from working. In addition, the trial court offered no explanation as to how it arrived at the amount of $20,000. Michelle claims that a trial court's unreasonable reliance on the future earning potential of a maintenance recipient constitutes grounds to reverse a maintenance award. As support for this contention, Michelle cites to *In re Marriage of Grunsten*, 304 Ill. App. 3d 12 (1999).

¶ 58 We are not persuaded. Contrary to Michelle's position, we find that there was sufficient evidence presented at trial that Michelle could work and that some income could properly be imputed to her. In its closing remarks, the trial court was very careful to point out the factors it considered important when it imputed some income to Michelle. Specifically, the court found that based upon the medical testimony admitted at trial, Michelle did have an impairment which would

have an effect on her ability to earn future income. However, the testimony offered did not establish that Michelle was disabled or could not work. Also, the trial court found that Michelle would have time to pursue some employment. The court then specifically weighed the following factors in determining the amount to be imputed: (1) Michelle was well educated and likely had connections in the community; (2) her degree was outdated and would not allow her to practice in Illinois; (3) she had not worked in many years; (4) she would have to be employed outside the focus of her education; and (5) she will be somewhat impaired by her physical condition. Based upon these factors, it is clear that the trial court did not err in finding that Michelle was capable of working and could have *some* income imputed to her. Therefore, we now turn to the issue of whether the trial court's finding that $20,000 income yearly could be imputed to Michelle was error.

¶ 59 We find no error. First, Michelle's daughter S.A., the only child living with her, will be 18 years old next year and simply will not need the same amount of supervision that a younger child would require. Therefore, Michelle will have sufficient time to work at a job where she could earn $20,000 per year. Also, although her degree in counseling is no longer valid, the fact remains that Michelle is a well educated woman living in an affluent community. The trial court's imputation of $20,000 of annual income generally equates to an hourly wage of $11.66 per hour if Michelle worked full-time, or $16.66 per hours if she worked part-time. A finding that a 43 year-old woman with Bachelor's and Master's degrees and who resides in an affluent community could earn such a modest income is not unreasonable, arbitrary, or not based on any evidence presented at trial.

¶ 60 Next, Michelle cites to *In re Marriage of Grunsten*, 304 Ill. App. 3d 12 (1999) for the proposition that a trial court's unreasonable reliance on the future earning potential of a maintenance recipient constitutes grounds to reverse a maintenance award. We have reviewed *Grunsten* and find

it to be distinguishable from the instant case. In *Grunsten*, the 52-year-old wife had retired from modeling nine years before the end of her 21-year marriage. At the time she retired, she was earning $22,000 per year. Her husband earned $275,000 per year and her initial financial affidavit listed expenses of $4,800 per month, which did not include larger, long-term expenses such as real estate taxes and health insurance. *Id*. at 20. Her psychiatrist testified that she suffered from depression and that a return to modeling would be very damaging to her self-esteem. The trial court rejected the wife's physician's testimony and found that her reasonable medical expenses were only $300 per month, despite evidence that her psychiatric bills alone were $800 per month. The court then set maintenance at $1,538 per month, finding that the wife could return to modeling at $22,000 per year. *Id*. at 20-21.

¶ 61 The appellate court reversed, and held that the maintenance award was totally inadequate to meet the wife's needs, would require her to invade her assets, and would leave her with less than half of what the husband claimed to need just for clothing and entertainment. *Id*. Further, it held that it was also against the manifest weight of the evidence for the trial court to find that the wife was healthy and capable of returning to the modeling industry, or that her reasonable medical bills were only $300 per month. *Id*. at 21.

¶ 62 Here, unlike in *Grunsten*, Michelle's doctors did not testify that a return to work would be harmful to her. Instead, Dr. Grober, her rheumatologist, testified that her ability to work would depend upon the nature of the job and whether her condition was under control. He said that Michelle did not need more sleep than the average person, and that she simply should consistently get 7 to 9 hours of sleep per night. Michelle's internist, Dr. Breger, testified that Michelle did not have a medical condition which would prevent her from working. Based upon this testimony, the

trial court found that Michelle was impaired, but that she was not disabled. Further, unlike in *Grunsten*, the trial court did not come up with the $20,000 figure based upon a salary that Michelle had been earning many years earlier and in an industry whose employment was directly connected to one's physical appearance. Instead, as we have noted, several factors went into the trial court's determination that $20,000 per year was a fair amount of salary to impute to Michelle. Specifically, the trial court found that Michelle was not disabled, that she had the time to be employed, she was well educated, and that she lived in an affluent community where her ties with the community would aid her in gaining employment. Moreover, contrary to Michelle's characterization of *Grunsten*, the trial court's imputation of the wife's former modeling salary was not the only ground for reversal in that case. Other factors included the very low maintenance (6.7% of the husband's income), the trial court's rejection of the wife's psychiatric testimony, and the court's finding that only $300 per month in medical bills was reasonable when the evidence indicated that the wife's psychiatric bills alone were $800 per month. *Id*. at 20-21. Accordingly, we find that the facts in *Grunsten* are distinguishable from those in the instant case and do not aid us in our analysis. For the reasons previously noted, we find the trial court's finding that a salary of $20,000 per year should be imputed to Michelle was not against the manifest weight of the evidence.

¶ 63 2. Trial Court's Findings Under the Act

¶ 64 Next, Michelle contends that the trial court's award of $9,000 per month in taxable maintenance to her was an abuse of discretion because such an award contravenes the trial court's express findings and the uncontroverted evidence at trial. As support for this contention, Michelle created a table in her brief entitled, "Findings and Evidence" and listed various statements from the

record next to each statutory factor that the trial court was required to consider pursuant to the Act. See 750 ILCS 5/504 (West 2010).

¶ 65 We have reviewed Michelle's "Findings and Evidence" table and find it to be misleading. For example, in the section of the table entitled, "the needs of each party," Michelle noted that the trial court found that throughout the litigation William "has, in fact, failed to reduce his expenses and continued to spend extravagantly." However, Michelle failed to note that the trial court also found that: (1) Michelle's listed expenses were exorbitant and unsustainable; and (2) she had *raised* her spending during the divorce. Even more egregious, in that same section, Michelle goes on to state that the trial court found, after an evidentiary hearing, that her car insurance was $369 per month and that her therapy was $563 per month. The record cite that Michelle gives for these claims are to: (1) her preliminary financial affidavit, which was filed in July 2008; and (2) the trial court's order dated July 15, 2008, in which Michelle alleges the trial court found her affidavit to be credible. However, Michelle ignores the fact that the trial court specifically noted in its ruling after trial that the parties should not rely on its findings from the temporary support hearing. Specifically, the court stated the following:

¶ 66 "The court would caution both sides not to rely too much on its findings from the temporary support hearing in July of 2008, the discovery process had just begun and much of the information regarding needs, resources and income and litigant credibility was based on preliminary information. Also, *because the court believes that husband's income has somewhat diminished and circumstances have changed, the wife's lifestyle is going to change.*"

In the section of the table entitled, "the age and physical and emotional condition of both parties" Michelle put the following statements into the "Findings and Evidence" section: (1) "Michelle's lupus prevents her from working"; and (2) "Dr. Grober testified that there is a low likelihood that Michelle's symptoms will disappear." First, although Michelle testified that her lupus prevented her from working, it is misleading for her to only cite to her testimony when it is clear from the record that this conclusion was not reached by either one of her physicians. In addition, although Dr. Grober testified that Michelle's symptoms will probably not disappear, Michelle failed to note that he *also* testified that there was a low likelihood that her condition would change for the *worse*, either.

¶ 67 Within this argument, Michelle claims that even if the trial court's imputation of income to her was appropriate, the trial court abused its discretion in only awarding her $9,000 per month in taxable maintenance because: (1) she would still experience a significant budget deficit each month; and (2) she would be receiving much less than William to meet her monthly needs.

¶ 68 Michelle offers two examples of her budget deficit. First, Michelle claims that she requires $15,383.16 in after-tax dollars to approximate the standard of living she enjoyed during the parties' marriage ($11,755 from some expenses listed in her financial affidavit and other expenses based upon her testimony, plus the $3,628.16 listed on William's financial affidavit as the expenses associated with the Pierce Street residence). Therefore, Michelle argues, when you add the approximately $7,000 per month in maintenance that she receives after taxes to the imputed income net amount of $1,433 per month, then by the trial court's own calculation, Michelle still experiences a lifestyle deficit in the amount of $6,950.16 per month (($7,000 + $1,433) - $15,383.16 = - $6,950.16).

¶ 69 As another example of her budget deficit, Michelle contends that if one adds the amount of after-tax maintenance she receives (allegedly $7,000) to the $2,708 she receives for child support, she is left with only $9,706 per month to meet all of her expenses. She then posits that when one adds the undisputed costs of the expenses for the Pierce Street residence ($3,618.26 per month), the undisputed cost of her car insurance, medical insurance and therapy ($1,501), the undisputed cost of the expenses related to the parties' children ($3,130 per month), and the cost of her health club and her personal trainer ($811), she is only left with $637.84 each month to cover all of her other expenses. For these reasons, Michelle claims, instead of $9,000 in taxable maintenance per month, she is entitled to $19,236 of taxable monthly maintenance to simply approximate the standard of living she enjoyed during the parties' marriage.

¶ 70 There are several problems with Michelle's argument. In both examples, Michelle's assumption that her after-tax maintenance award would come to $7,000 per month is not a figure that is properly a part of the record, and we do not know if that figure takes into account a dependency exemption or any itemized deductions. With regard to her first example, Michelle does not take into account that a portion of the common expenses listed in her affidavit should be paid from her child support award, which provides her with an extra $2,708 per month. As for her second example, Michelle neglects to add in the $1,433 per month of imputed income, the determination of which we have already held was not against the manifest weight of the evidence.

¶ 71 More problematic, however, is Michelle's assumption that she is entitled to every expense that she either listed in her financial affidavit or testified to, especially in light of the fact that the trial court referred to her expenses as "exorbitant" and "unsustainable." As we have previously noted, Michelle's reliance on the trial court's finding that her financial affidavit was "credible" at the

temporary support hearing is misplaced in light of the comments it made at the end of the trial. Even more important, however, is that a review of the July 15, 2008 order indicates that the trial court *actually* held, "[t]his court finds Michelle's 11.02 affidavit to be credible *but finds that the amounts requested for maid service, miscellaneous expenses (4a) and gifts shall not be awarded in their entirety."* In the affidavit, maid service was listed as $1,430 per month (3 times a week at $110/visit). Section 4a of the affidavits lists expenses for entertainment ($2,997 per month), newspapers, magazines, books ($75 per month), gifts ($1,500 per month), donations ($450 per month), vacations ($1,754 per month), health clubs ($123 per month), personal trainer ($823 per month). Like her "Findings and Evidence" table, therefore, we find Michelle's representation in her brief that "[a]t the temporary support hearing, which was an evidentiary hearing, the trial court found that Michelle's 11.02 Financial Affidavit was credible" to be a misleading statement. It is clear from the record here that the parties both lived above their lifestyle during their marriage and throughout the dissolution proceedings. As the trial court properly noted, because William's income has diminished and circumstances have changed, Michelle's lifestyle was going to have to change, too.

¶ 72 Finally, with regard to Michelle's argument that the $9,000 per month in taxable maintenance would leave her with much less than William to meet her monthly needs, it is clear from the record that, as the trial court found, William amassed a substantial amount of debt to pay Michelle's temporary support order. On the other hand, Michelle received the marital home, valued at around $800,000, mortgage-free. She also received a $350,000 tax free payment from William, along with $30,000 of his 2009 bonus. William, on the other hand, received Silver Stone Ranch, which while perhaps worth $3,000,000, is in debt up to $2,000,000. Also, he received the Glencoe Avenue residence, which is also in debt. Based upon our complete review of the entire record in the case,

along with the very detailed findings made by the trial court, we determine that the trial court properly weighed all the relevant statutory factors here and properly ~~found~~ held that Michelle was entitled to $9,000 per month in taxable maintenance. Such a determination is not an abuse of discretion.

¶ 73 3. Illinois Case Law

¶ 74 Next, Michelle claims that the $9,000 taxable maintenance award contravenes established case law. Specifically, she argues that the maintenance award ignores the fact that she was not awarded any income producing property, and William was awarded substantial income producing property through his ownership in WWS. As support for that proposition, Michelle cites to *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293 (2010), and alleges that whether the maintenance recipient was awarded sufficient income producing property was the "dispositive fact" in that case. She also cites to *In re Marriage of Thornton*, 89 Ill. App. 3d 1078 (1980), *In re Marriage of Grunsten*, 304 Ill. App. 3d 12 (1999), *In re Marriage of Dunlap*, 294 Ill. App. 3d 768 (1998), and *In re Marriage of Charles*, 284 Ill. App. 3d 339 (1996) as support for her claim that her maintenance award contravened established case law.

¶ 75 Before we discuss the *Nord* case, however, we must point out that, contrary to Michelle's claim, no one statutory factor is dispositive of the determination whether maintenance should be granted or denied. *In re Marriage of Chapman*, 285 Ill. App. 3d 377, 382 (1996).

¶ 76 In *Nord*, the appellate court affirmed a $17,000 maintenance award, which represented 25.5% of the husband's income. The wife was 58 years old, only had a high school education, and the parties were married 34 years. *Nord* at 304. A review of *Nord* indicates that the wife's alleged lack of income-producing *was not* the "dispositive fact" in the case, especially since the appellate court

there specifically found "the fact the trial court did not determine with mathematical certainty the income-generating potential of [wife's] assets *does not mean it failed to consider this factor in awarding maintenance.*" *Id.* (emphasis added). Moreover, as an affirmance, the *Nord* case cannot support Michelle's argument that the trial court abused its discretion here because she was not awarded any income producing property.

¶ 77 Here, Michelle phrases her argument that she was not awarded any income producing property and William was awarded substantial income producing property through his ownership in WWS. However, William was awarded his interest in WWS *pursuant to the Marital Settlement Agreement*. Therefore, *both* parties agreed to that award. Further, Michelle does not point to any other income-producing property that was awarded to William that she believes should have been awarded to her instead. Legally, then, Michelle cannot claim error here. Finally, we note that Michelle received a tax-free payment of $350,000 from William, along with $30,000 of his 2009 bonus. Although this money does not have the substantial income-producing potential as WWS, it does, however, have the potential to produce income if invested.

¶ 78 Michelle offers several examples of cases where she believes a maintenance award was reversed on facts similar to the instant case. In *In re Marriage of Thornton*, 89 Ill. App. 3d 1078 (1980), the trial court found that the parties "enjoyed a high standard of living" and awarded the wife $48,000 per year in unallocated support. *Id*. at 1080, 1087. The net effect of the trial court's ruling was that the wife received approximately 29.5 percent of the husband's after-tax cash. However, the unallocated support in that case was to cover support for four children as well as the wife. Moreover, the appellate court found that the husband had substantial assets and lived in a mansion built in 1857 that had been gifted to him, which was non-marital property. It appeared from the record in that case

that the husband was able to pay "upwards of $48,000 in maintenance and child support while enjoying the standard of living established during the marriage." *Id*. at 1087-88. The wife, on the other hand, was given very little income-producing property. Ultimately, the court held as follows:

¶ 79 "Where, as here, the property awarded to the spouse seeking maintenance is not so substantial as to provide significant income for her to live on, and where the spouse from whom maintenance is sought has sufficient income to meet his own needs while meeting those of his spouse, the spouse seeking maintenance is not required to sell her assets or impair her capital in order to maintain herself in the manner established during the marriage." *Id.* at 1088.

¶ 80 We fail to see how *Thornton* is similar to the case at hand. Although in both cases the wife received little income-producing property, the similarities end there. In that case, the unallocated award included support for the wife and four children. In addition, the evidence presented indicated that the husband had substantial assets and lived in a mansion that had been gifted to him. Here, the record is quite clear that along with WWS, a substantial income producing property, William also was awarded substantial debt. Michelle, on the other hand, is debt-free, will receive a partially tax free income of over $140,000 per year, and has been given almost $400,000 in cash. We agree with the trial court that Michelle possesses substantial liquidity and Williams possess substantial debt.

¶ 81 Next, Michelle cites to *In re Marriage of Grunsten*, 304 Ill. App. 3d 12 (1999), and notes that in reversing, the appellate court found that the wife was awarded very little income producing property. *Id*. At 20. We have already reviewed *Grunsten* and will not do so again, except to say that there were many grounds for reversal in that case. We are also not persuaded by the remaining "income-producing" cases that Michelle has cited for our review. In *In re Marriage of Dunlap*, 294

Ill. App. 3d 768 (1998), the maintenance award was reversed because it left the wife with a substantial lifestyle deficit while leaving the husband with a surplus amount. The appellate court reversed and remanded with instructions to the trial court to reset maintenance and give proper weight to the standard of living during the marriage. *Id*. at 74. Again, however, in this case it is clear that William amassed substantial debt in meeting the temporary maintenance award of $11,000 per month. Since his income was insufficient to provide both parties with the same standard of living they enjoyed during the marriage, the trial court properly crafted a maintenance award that reflected the fact that both parties had to bear a downgrade in lifestyle. See *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 621 (2004). Finally, *In re Marriage of Charles*, 284 Ill. App. 3d 339 (1996) does not aid Michelle's argument. In *Charles*, the appellate court remanded the case for reconsideration of property distribution and therefore also a reconsideration of maintenance. *Id*. at 349. Further, to the extent that *Charles* discussed the trial court's failure to consider the disparate earning potential of the parties, that is not the case here. In its ruling, the trial court was very careful to note the disparate earning potential of Michelle and William, and that factor was taken into consideration in the maintenance award.

¶ 82 4. William's Salary

¶ 83 Next, Michelle contends that the maintenance award was an abuse of discretion because it was based upon a finding that William's income was between $550,000 and $600,000 when Michelle believes that his average income between 2005 and 2009 was $728,059. Specifically, Michelle claims that the income finding was against the manifest weight of the evidence because although the trial court initially stated that it arrived at this amount by averaging William's income from 2005 to 2009, it later used William's adjusted gross income as "general trends" because it said

that it could not reliably determine William's income with certainty. Michelle also argues that it was improper for the trial court to consider the withdrawal of William's retirement funds as "non-recurring" income and therefore not part of the equation. Instead, she claims, the trial court should have relied on the adjusted gross income on William's tax returns when averaging his income over the five year period in question.

¶ 84 We initially note that although Michelle states that the average adjusted gross income for William between 2005 and 2009 is $728,059, William states in his brief that after taking into account his 2009 W-2 and K-1 income, this figure is actually $743,342.

¶ 85 We find no error. In fact, we find that the trial court's use of William's tax returns as "general trends" actually favored Michelle because it increased the amount of William's average adjusted gross income from 2005 to 2009. When removing the non-recurring income in years 2005, 2006 and 2007 (and taking into account William's 2009 income of $376,414 instead of Michelle's figure of $299,999.84 for that year), William's average adjusted gross income was $507,019. Instead of using that figure, however, the trial court set William's average adjusted gross income between $550,000 and $600,000, so Michelle benefitted from this increase.

¶ 86 Further, we do not find that the trial court erred in removing "non-recurring" income from the equation when determining William's average adjusted gross income. Michelle points out that the Act does not provide for a deduction of non-recurring income in calculating net income for purposes of child support. See *In re Marriage of Rogers*, 213 Ill. 2d 129, 138-39 (2004). However, Michelle has not cited any case that stands for the proposition that non-recurring income should be considered in determining income for purposes of a maintenance award. The Act provides a set definition of "net income" for purposes of determining child support. See 750 ILCS 5/504(a)(3)

(West 2010). Such a provision is not provided for in the section of the Act pertaining to maintenance. We presume that the legislature intended different results by the different language in the Act concerning child support compared with its language regarding maintenance. See *In re Marriage of Walker*, 386 Ill. App. 3d 1034 (2008).

¶ 87 Accordingly, we find that the trial court's finding that William's income was between $550,000 and $600,000 was not against the manifest weight of the evidence. For all of these reasons, then, the award of $9,000 per month in taxable maintenance was not an abuse of discretion.

¶ 88 B. Attorneys' Fees and Costs

¶ 89 Finally, Michelle argues that the trial court erred in ordering her to pay at least $53,000 toward her attorneys' fees and costs.

¶ 90 Pursuant to section 503(j) of the Act, a trial court can order one party to contribute to the other party's attorneys' fees and costs based on the criteria for division of marital property under section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under section 504. 750 ILCS 5/503(j) (West 2010). Also, pursuant to section 508 of the Act, a trial court may, in its discretion, and after considering all the financial resources of the parties, order one spouse to pay a part or all of the other's attorneys' 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). The trial court's award of an attorney fee contribution will be reviewed under an abuse of discretion standard. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649 (2007).

¶ 91 Michelle states that of the $204,487.25 that she incurred in attorneys' fees, the trial court determined that $153,000 of the fees were reasonable and ordered William to contribute $100,000 and therefore Michelle would have to pay the remaining $53,000. According to Michelle, this award

does not comport with well-settled case law and cannot be reconciled with the evidence adduced at trial or the trial court's express findings regarding the financial standing of the parties. She argues that the law does not require her to sell her home in order to pay her attorneys' fees and that William should be required to pay all of her attorneys' fees because his actions needlessly increased the cost of litigation, a fact that the trial court acknowledged as well.

¶ 92 Although Michelle is correct that of the $204,487.25 she requested William to pay, the trial court reduced the bill to $153,00 and only ordered William to pay $100,000 of that amount, a review of the record indicates that William had paid a substantial amount of Michelle's other legal fees in connection with the dissolution proceedings as well. In fact, Michelle had incurred at least $346,987.25 in attorneys' fees, which included the $204,487.25 of outstanding fees *plus* $142,500 that William had already paid. The trial court found that $24,500 of the $142,500 William paid for Michelle's fees came from joint funds. Therefore, with the additional $100,000 contribution from William ordered at the end of the case, William's contribution to Michelle's litigation expenses from separate funds was $228,00 out of total reasonable fees of $295,500. This does not include any portion of the $24,500 William paid to Michelle's attorneys from joint funds.

¶ 93 Although we agree with Michelle that William's actions needlessly increased the cost of the litigation, it is clear from the trial court's award of fees that it took William's actions into consideration when requiring him to pay 82.1 percent of Michelle's attorneys' fees. Further, although we agree with Michelle that she should not be required to sell her home to pay for her legal fees, such is not the case here. She may have to use some of the $380,000 she received from William to pay such fees; however, the trial court's determination that Michelle should pay less than a fifth of her attorneys' fees was not an abuse of discretion.

¶ 94 III. CONCLUSION

¶ 95 Based on all the evidence in the record, we determine that the trial court's award of $9,000 per month in taxable maintenance to Michelle was not an abuse of discretion. We also hold that the trial court did not abuse its discretion in ordering William to pay $100,000 of Michelle's remaining attorneys' fees, leaving her to pay $53,000 of her attorneys' fees.

¶ 96 Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶ 97 Affirmed.