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2019 IL App (3d) 170821-U

Order filed August 21, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
JOAN SERDAR,)	Will County, Illinois.
)	
Petitioner-Appellee,)	
)	Appeal No. 3-17-0821
and)	Circuit No. 14-D-881
)	
RICHARD SERDAR,)	
)	The Honorable
Respondent-Appellant and)	Victoria M. Kennison,
Cross-Appellee)	Judge, presiding.
)	
(Michael D. Canulli, Cross-Appellant).)	

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concur in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court’s decision on the judgment for dissolution of marriage.

¶ 2 Petitioner Joan Serdar and respondent Richard Serdar were married and had two children.

In May 2014, Joan filed a petition for dissolution of marriage. Before trial, the parties filed several motions: Joan filed a notice of intent to claim dissipation of assets against Richard and

Richard's attorney, Michael Canulli, filed a petition for interim and prospective attorney fees and petition for contribution of attorney fees. The trial court continued the motions to trial. After the trial, the court entered a judgment for dissolution of marriage, *inter alia*, determining that (1) the evidence showed that Richard's salary was \$67,606; (2) Richard must pay \$969 per month in child support; (3) Richard was not entitled to maintenance; (4) Richard must contribute to a trust fund for the children; (5) Richard must pay one-half of the funds he dissipated, totaling \$23,394.50; and (6) Canulli's petitions for attorney fees were denied. Richard appealed, and Canulli cross-appealed. We affirm.

¶ 3

I. BACKGROUND

¶ 4

Petitioner Joan Serdar and respondent Richard Serdar were married on August 8, 1992 and, during their marriage, had two children. On May 21, 2014, Joan filed a petition for dissolution of marriage. Between May 2014 and November 2016, a trial on the dissolution of marriage petition was held. During this time, the parties filed a series of motions: Joan filed a notice of intent to claim dissipation of assets and Richard's attorney, Michael Canulli, filed a petition for interim and prospective attorney fees and petition for contribution of attorney fees. In Joan's notice of intent, she argued that Richard improperly used marital funds for personal use in the amount of \$115,495.47. In particular, she claimed that Richard withdrew \$46,789.92 from the parties' Harris Bank joint savings account. In Richard's response, he admitted that he withdrew \$46,789.92 from the parties' joint checking account and deposited the money into his personal checking account. Richard claims, however, that he spent the money on his kids' tuition, his daughter's softball, his truck payments and insurance, maintenance of his truck, his medical deductibles, medicine, and utilities. He submitted his checkbook register and related checks to the court.

¶ 5 In Canulli's petition for interim and prospective attorney fees, Canulli stated that Joan earned \$87,000 a year; received company benefits in the amount of \$15,000; received unreported income from her company entitled AquaCheck, Inc.; and had control of the marital estate. Canulli also stated that Richard owed \$13,971.25 in attorney fees, that Canulli was anticipating \$25,000 in additional expenses, and that Richard could not afford to pay the fees with his minimal income. Based on the disparity between Richard and Joan's income, Canulli requested that Joan pay interim attorney fees in the amount of \$13,971.25 for the outstanding balance and \$35,000 for an additional retainer payment. Two days later, a status hearing on the petition was held. The court gave Joan 14 days to respond to the petition for interim fees and scheduled a hearing on the petition for January 8, 2016. On January 8, the court granted Canulli's motion for leave to file an amended petition for interim fees within 14 days, granted Joan 21 days to respond to the amended petition, and rescheduled the hearing to March 10. Canulli failed to file an amended petition with 14 days of the court's January 8 order. On February 9, Canulli filed another motion for leave to file an amended petition, seeking \$31,429 in unpaid attorney fees and \$35,000 for an additional retainer payment, totaling \$66,429. On February 16, Joan filed a motion to continue, requesting that the court continue all temporary motions to the trial that was scheduled on May 2, 2016, to prevent further delay of the trial and to present all evidence in one proceeding. Over Canulli's objection, the court granted the motion to continue all temporary motions to trial.

¶ 6 In Canulli's petition for contribution of attorney fees, he argued that, as of March 23, 2016, Richard owed \$34,743.80 in attorney fees and that Joan should contribute to Richard's attorney fees because she earns a higher salary than Richard, receives financial benefits from her parents, possesses "sufficient assets", and took \$29,000 from the couples' Home Equity Line of

Credit (HELOC) to pay her attorney fees without Richard's knowledge. On April 5, the court continued the petition for contribution to the May 2 trial.

¶ 7 At trial, Joan testified that she filed for divorce and moved out of the marital residence in May 2014. After Joan moved out of the marital residence, she moved into a residence purchased by her parents. She was not paying any rent to live in the home although she entered into a rental agreement to pay \$1000 per month. Her parents were paying the real estate taxes and homeowner's insurance and she paid for the home maintenance, electric, gas, cable, pool maintenance, and bought a washer and dryer for the residence. Joan also continued to pay the mortgage on the marital residence since she moved out because she is the only person listed as the mortgagee on the note. In 2014, she paid the homeowner's insurance on the marital residence, totaling \$1200, and paid for the property taxes, totaling \$10,500. In 2015, Richard paid the property taxes on the marital residence. She believed the marital residence had \$165,000 worth of equity. From May 2014 through April 2016, Joan paid for the children's extracurricular activities, school expenses, medical expenses, clothing, and grooming. Joan withdrew \$29,000 from the marital residence's HELOC and paid \$1500 toward the children's school tuition and the remainder to her attorneys.

¶ 8 Joan earns an annual gross income of \$87,500. She works for a business owned by her family. Her employer pays for her cell phone bill, gasoline, and some personal expenses on a business American Express card and provides her with a company vehicle. She used her cell phone and vehicle for personal and business use. She estimated that 60% of her gas card purchases and 80% of her AT&T phone usage was personal. Joan created a water sample testing business called Aquacheck during the marriage. Aquacheck began its operations in 1997 and dissolved in 2015. Her father's business, Arro, absorbed Aquacheck into its company and did the

sample testing for Aquacheck when it was in operation. Aquacheck generated approximately \$10,000 in gross receipts but Joan did not draw a salary in the business as the expenses were \$10,000 per year. The family lived a “simple lifestyle.” During the marriage, the family occasionally dined out at local taverns and shopped at Target and Kohl’s seeking sale items and at resale stores seeking children’s clothes. They cooked meals at home and went on four domestic vacations during the marriage. Since she moved out of the marital residence, Joan and her children have eaten out less, only purchase absolute necessities, and do not have a lot of disposable income. Joan considered starting another business to test medical marijuana but never obtained the necessary certification and did not apply for a permit.

¶ 9 Joan observed Richard write off business and personal expenses on tax returns. Richard had cash jobs throughout their marriage and told her that he preferred to be paid in cash so he did not have to report the income on his taxes. However, Joan did not document Richard’s receipts of cash payment for his services. She saw Richard’s work truck at job sites that had not been disclosed to the court in the dissolution proceeding and she saw Richard plowing snow two to three times during the past winter. She submitted pictures and a video depicting Richard removing materials from his truck at alleged job sites. She also submitted Richard’s Facebook activity log into evidence. His account depicted him standing on top of a building and playing basketball in 2014 or 2015, participating in a 5K run in December 2014, and discussing the start of his softball season in May 2015.

¶ 10 Richard testified that he was a union carpenter and his union wages were \$44 per hour with the potential for overtime. When he is laid off from his union job, he calls the union to be placed on a waitlist. His last union job was in March 2016. He received clearance to work at nuclear power plants, obtained his electrician’s license after the parties separated, and obtained a

welding certification that eventually expired. He also obtained an OSHA certification and could pour concrete. He took some college courses during the marriage. Richard started a business, “Serdar Construction,” before the parties were married and realized about 8% profit on each job he accrued through the business. In his February 2016 financial affidavit, Richard listed his only income as unemployment benefits in the amount of \$1106 and he testified that he had no other income. From January 2016 through May 2016, he performed three Serdar Construction jobs and received \$2080 for his work. Richard was the lowest bidder on certain jobs offered by the City of Joliet but could not accept the jobs because of the \$2500 lien on a property he purchased in 2009. Richard used the union, newspaper, Internet, and friends to seek work. Between February and May 2016, Richard had one interview but did not get the job.

¶ 11 Richard paid for 50% of their daughter’s dental expenses and graduation fees and contributed to her softball fees. Richard claimed that he should not have to pay child support or contribute to the children’s activities or medical expenses unless he could afford it in the future. He could not afford to contribute to their son’s braces. Richard charged about \$300 per month on his credit cards and paid them off each month except for one on which he had a balance between \$200 to \$500. Richard reported all the money he received from working on his tax returns, including cash payments. He kept an envelope at his residence with cash from his parents, uncle, and people whose tires he changed. Richard’s poor health impaired his ability to work and, as he got older, his endurance, balance, and ability to climb weakened. He injured his shoulder in 2010 and was off work for four to five months. Over the past seven years, Richard suffered a broken hand, broken ribs, an Achilles’ tendon injury, and a foot infection requiring hospitalization. His foot infection occurred in March 2016, and as a result, Richard was unable to complete the union job he was working on at the time of the injury. He was cleared to work in April 2016. Richard

testified that he was not generating income or working on a job in the pictures and the video submitted into evidence by Joan. Richard purchased a Harley motorcycle in August 2015. His parents paid his Harley bill each month.

¶ 12 On June 1, 2016, the proofs were closed. On June 21, Joan filed an emergency motion to reopen proofs, arguing that Richard falsely testified about his City of Joliet bids; that he won construction bids totaling \$49,600; and that he did not disclose a check in the amount of \$9690 that the City issued to him in January 2016. The trial court reopened the proofs and ordered Richard to submit “a signed, sworn affidavit attesting to all bids, proposals, submissions, contracts, and purchase orders to and from all entities both public and private for 1-1-15 to present” and that all attachments to the affidavit must include the funds Richard received and owed as a result of his jobs and expenses incurred during those jobs.

¶ 13 The trial recommenced on November 1, 2016. Richard stated that he did not produce any documents relating to his bids and proposals because he disposed of all the related documents around June 1, 2016. He disposed of the bidding contracts because he knew he would not get the contracts because of the money he owed the City. He contacted the City after the trial court’s order and the City e-mailed him a list of the jobs he had worked on. He also submitted the City’s e-mail to the court. He believed that he complied with the trial court’s order by filling out his new financial affidavit and did not know he was required to document jobs and bids. He built a 10% profit into each bid and factored in out-of-pocket expenses for labor, materials, and overhead. The \$2500 lien Richard owed to the City resulted from: not cutting the grass, noncompliance with requirements regarding the property’s condition, and failure to pay the water bill since 2009. Although his mother had loaned him money in the past, she refused to help him to pay this lien. He asked Joan to pay the fine and asked the City if it would waive the fine.

His attorney instructed him not to use the HELOC to pay the fine. The City's e-mail showed that Richard bid \$140,800 on work projects between March and April 2016 and he was awarded bids on work totaling \$89,100.

¶ 14 Richard opened a personal bank account at M&M Bank and made a \$9690 deposit in February 2016. Richard did not produce documents related to this account until November 2016 although his attorney acknowledged the existence of the account in June 2016. He opened the account because his other bank had too many fees and he used his parents address on the account because he anticipated selling the marital residence. Richard had \$5973 in the M&M Bank account at the time he was awarded the various bids. He did not pay the lien from the account because he anticipated bills from his hospitalization, taxes, and attorney fees. He paid \$5000 from the account to his attorney in June 2016. He also had a BMO Harris account that he deposited his income into. The marital address was not listed on his BMO Harris account or Harley loan account.

¶ 15 In July 2016, Richard accepted full-time employment at Holy Cross Church and St. Mary's Nativity Church. He worked 40 hours a week for \$15 per hour and anticipated earning \$30,000 per year. He received additional compensation from the churches when he plowed snow. Since May 2016, he suffered two herniated discs in his lower back and he could not grip or hold tools as he once could. His legs, feet, hands, and arms go numb and it was harder for him to bend and lift. His employment with the churches was less physically demanding than his other jobs and would be year-round work. He took a week off from his church jobs to work a union job for CB&I and he earned \$8689.02 from the job.

¶ 16 On November 7, 2017, the trial court entered a judgment for dissolution of marriage. The trial court found that Joan's testimony was credible but Richard's testimony about his finances,

assets, job opportunities, and health restrictions was “largely inaccurate, self-serving and incredible.” Richard failed to properly disclose certain documents and acted in bad faith when he failed to notify Joan of his subcontract bids. He also acted in bad faith when he failed to maintain and improve his skills and welder certification. The court found that Richard had earned \$8000 per year in unreported cash payments based on the unexplained bank deposit Richard made and the photos showing Richard at various sites with his work truck. The court held that Richard was voluntarily unemployed or underemployed and that he failed to take advantage of the bid awards by not taking “simple steps necessary to pay-off the small City of Joliet lien in order to secure a subcontract for construction work worth many thousands of dollars.” The court averaged Richard’s total gross income from 2013 to 2015, including the average unreported cash and determined that Richard’s annual gross income was \$67,606. The court divided \$67,606 into two components: It determined that Richard’s current annual income was \$30,000 based on his full-time position with the churches and imputed \$37,606 in additional income.

¶ 17 The court ruled that Richard dissipated \$46,789.92 from the parties’ joint savings account because he failed to show how the marital funds were used for a marital purpose. The court ordered Richard to pay Joan the one-half of the dissipated funds, totaling \$23,394.50. The court also denied Richard’s request for maintenance, finding that he was “gainfully employed or capable of gainful employment, earning substantial income, and [was] able to provide [his] own support” and that Richard was awarded marital and non-marital property worth enough for him to “secure new housing and still have savings and the ability to continue to earn income and save for retirement.” The court awarded Joan child support in the amount of \$969 per month and back child support in the amount of \$32,946 based on Richard’s gross income of \$67,606 and Joan’s gross income of \$92,285. The court also imposed a section 503(g) trust, finding that Richard was

unwilling to pay child support because (1) he did not make any effort to obtain employment related to his work experience and earning potential although he had the ability to “maximize his work, (2) he intentionally did not disclose certain income and did not produce work payments he received during discovery, and (3) he avoided paying child support while he financed his personal entertainment and “maintained a very comfortable standard of living.” Finally, the court denied Canulli’s request for interim and prospective fees, finding that Richard had “the financial means, resources, and ability to pay his reasonable attorney’s fees and costs in this matter.” Richard appealed.

¶ 18

II. ANALYSIS

¶ 19

A. Appeal

¶ 20

1. Imputation of Income

¶ 21

Richard argues that the trial court abused its discretion when it imputed \$37,606 of annual income to his \$30,000 salary because there was no evidence that Richard made \$67,606 or that he would make that amount in the future. Joan contends that the trial court properly imputed additional income to Richard’s salary because the evidence shows that Richard hid his employment and failed to take advantage of other employment opportunities. Joan also claims that the trial court properly found that Richard’s testimony about his finances was incredible.

¶ 22

When considering a maintenance or child support award, the trial court may impute a support obligation higher than that established by the party’s actual income. See *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 44; *In re Marriage of Ruvola*, 2017 IL App (2d) 160737, ¶ 39. “In order to impute income to a party, the court must find that the party is voluntarily unemployed, is attempting to evade a support obligation, or has unreasonably failed to take advantage of an employment opportunity.” *Ruvola*, 2017 IL App (2d) 160737, ¶ 39. A court may

impute income in cases when a party is voluntarily unemployed or voluntarily underemployed. *Id.* “A trial court may not impute income in the amount of an obligor’s prior income where the obligor has been involuntarily terminated from his prior employment and there is no evidence that a job with the same salary is available to him.” *Liszka*, 2016 IL App (3d) 150238, ¶ 44. The trial court’s decision whether to impute income is reviewed for an abuse of discretion. *Id.* A court abuses its discretion when no reasonable person would take the view adopted by the court. *Ruvola*, 2017 IL App (2d) 160737, ¶ 39.

¶ 23 Here, the trial court found that Richard was physically able-bodied and capable of full-time and gainful employment. In addition, the court determined that Richard’s testimony was not credible because he failed to provide medical records to corroborate his claim of poor physical health and his testimony was contradicted by video and photographic evidence depicting his mobility. The court also found that Richard was voluntarily unemployed and underemployed for several reasons. Richard’s previous tax returns showed that he made \$52,215 in 2013; \$69,891 in 2014; and \$56,712 in 2015. Richard did not provide any evidence as to his inability to make the same earnings after 2015 aside from his poor physical health; however, the trial court found his testimony to be incredible. Furthermore, Richard did not take the opportunity to pay off the \$2500 lien in order to accept bids totaling \$89,100 with the City of Joliet. Even if the court believed that Richard only realized 10% profit from his bid awards, he still would have made \$8910 from those bids, which is more than the cost of the lien. Moreover, Richard performed construction jobs and snow-removal jobs that he did not disclose on his tax returns and, therefore, the court determined that Richard earned about \$8000 per year in unreported cash income. Richard also rarely utilized his skillset and certification to make more money and even allowed his welder certificate to expire. Based on Richard’s average income from 2013 to 2015

and the evidence of his unwillingness to obtain employment readily available to him, the court imputed \$37,606 to his \$30,000 salary from his employment at the churches, totaling \$67,606. Based on the court's findings and its credibility determinations, we hold that the trial court's imputation of income was not an abuse of discretion.

¶ 24 2. Child Support

¶ 25 Richard argues that the trial court abused its discretion when it failed to deduct ordinary and necessary expenses required to carry on his trade from his net income as statutorily required when calculating child support under the July 2017 amended version of section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) (Public Act 100-0923 (eff. July 1, 2017) (amending 750 ILCS 5/505)). Joan asserts that the earlier version of section 505 is applicable to this case and that, under that version, the court was not required to deduct Richard's business expenses from his net income. Joan also contends that Richard failed to prove that he had any additional deductible income applicable to the child support calculation.

¶ 26 Effective July 1, 2017, Public Act 100-0923 amended the child support calculation guidelines. Public Act 100-0923 (eff. July 1, 2017) (amending 750 ILCS 5/505). Citing *In re Marriage of Cole*, 2016 IL App (5th) 150224, Richard references the language of both the pre- and post-amendment statute. Joan argues that the pre-amendment provision applies to this case. In *Cole*, the court determined that the pre-amended version of the maintenance guideline statute applied because (1) the statutory change was substantive and therefore would not apply retroactively and (2) all the events that shaped the trial court's opinion occurred prior to the effective date of the amendment. *Id.* ¶¶ 8-9. As in *Cole*, we find the changes to the child support guidelines are substantive in nature and we note that all of the tangible evidence and testimony was presented to the court prior to the amendment. (The reopened trial concluded in

November 2016.) Therefore, we apply the pre-amended version of section 505 in reviewing the trial court’s child support determination for an abuse of discretion. *In Re Marriage of Nelson*, 297 Ill. App. 3d 651, 655 (1998) (“[t]he findings of a trial court as to net income and the award of child support are within its discretion and will not be disturbed on appeal absent an abuse of discretion).

¶ 27 Section 505(a)(1) of the Act (750 ILCS 505(a)(1) (West 2016)) provides the guidelines for child support determinations, stating:

“(a) In a proceeding for dissolution of marriage *** the court may order either or both parents owing a duty to support a child of marriage to pay an amount reasonable and necessary for the support of the child, without regard to marital misconduct. ***

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Children	Percent of Supporting Party’s Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%”

¶ 28 Section 505(a)(3) of the Act (750 ILCS 505(a)(3) (West 2014)) lists certain deductions the court must factor into the net income calculation. We focus our attention on subsection (a)(3)(h), which is the only deduction applicable to Richard’s business expenses. It states:

“(3) ‘Net income’ is defined as the total of all income from all sources, minus the following deductions:

* * *

(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income including, but not limited to, student loans, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period.”

750 ILCS 505(a)(3)(h) (West 2014).

¶ 29 “To claim a deduction under section 505(a)(3)(h), the proponent must demonstrate (1) that the expense is reasonable and necessary expense for the production of income; and (2) that it falls into the category of debt repayment as evidenced by a specific repayment schedule.” *In re Marriage of Vance*, 2016 IL App (3d) 150717, ¶ 42. One-time business expenses should be deductible under the Act, so long as they create a “debt” which is subject to a strict repayment plan. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 59-60 (2008). Illinois courts have found that non-reimbursed business expenses do not constitute “repayment of debts” under section 505(a)(3)(h) because it typically does not follow a specific repayment schedule. *Gay v. Dunlap*, 279 Ill. App. 3d 140, 147 (1996); *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 59 (2008).

¶ 30 Although the pre-amended version of section 505(a)(3)(h) does not consider non-reimbursed business expenses as deductions, the trial court may still consider business expenses in its determination under subsection (a)(2). As the court stated in *Gay*:

“[W]e note the purpose of subsection (a)(3) (including subsection (h)) is simply to define the noncustodial parent’s net income. [Citation.] Subsection (a)(3) is not intended to determine what the “fair” amount of child support is, nor does it have anything to do with how much child support is to be paid. All it does is define net income. Expenses which it would be improper to deduct under subsection (a)(3) can still play a role in a trial court’s decision regarding departure from the statutory guidelines. As noted above, ‘the financial resources and needs of the non-custodial parent’ may legitimately be considered in this context.” *Gay*, 279 Ill. App. 3d at 147-58.

¶ 31 Here, the trial court determined that Richard must pay \$969 per month in child support based on his total gross income of \$67,606. Under the child support guidelines, \$969 equates to a \$41,528 annual salary. Therefore, the trial court subtracted \$26,078 from Richard’s gross income to determine his net income of \$41,528 before it calculated his child support obligation. There is no evidence in the record of how the trial court calculated the \$26,078 deduction. More specifically, the record is devoid of information disclosing whether the \$26,078 deduction includes Richard’s business expenses; they may actually have been included. Even if they were not, it is well-established that the court is not required to deduct non-reimbursable business expenses from the supporting party’s net income when calculating child support under the pre-

amended version of section 505. Furthermore, although section 505(a)(2) allows the court to deviate from the guidelines based on certain enumerated factors, there is no evidence in the record that the court found that a deviation from the guidelines was appropriate. Therefore, the trial court's child support determination was not an abuse of discretion.

¶ 32

3. Maintenance

¶ 33

Richard argues that the trial court's denial of his prayer that Joan pay him maintenance was an abuse of discretion because the evidence shows that the statutory factors in section 504(a) entitled him to receive it. Joan counters that the trial court did not abuse its discretion because it properly determined that Richard was not disadvantaged by the marriage and that, but for his voluntary underemployment, he could maintain himself in the manner established during the marriage.

¶ 34

“The purpose of maintenance is to enable a spouse who is disadvantaged through marriage to enjoy a standard of living commensurate with that during the marriage.” *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 73. Section 504 sets forth the factors the court must consider when determining whether to grant maintenance, 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 forgone or delayed education, training, employment, or career opportunities due to the marriage;

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

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

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a) (West 2014).

A spouse cannot use self-imposed poverty as a basis for claiming maintenance when he has the means to earn more income. *Liszka*, 2016 IL App (3d) 150238, ¶ 73. The trial court’s denial of maintenance is reviewed for an abuse of discretion. *Id.* ¶ 74.

¶ 35 Here, the trial court found that, based on the 504(a) factors, Richard was not entitled to maintenance because (1) he was receiving a divided share of about \$573,856 from the marital estate and (2) he was awarded the Serdar Construction business, valued over \$71,600. The court held that, therefore, Richard had “sufficient liquid assets to secure new housing and still have savings and the ability to continue to earn income and save for retirement.” The court also found that Richard had “the physical ability, talent, and means in which to earn a comfortable living should he choose to do so.” For example, between 2013 and 2015, Richard received an average income of \$59,606 and had the opportunity to accept construction bids from the City of Joliet totaling \$89,1000. Furthermore, the court determined that admitted photographs and a video had shown that Richard had the mobility to perform construction jobs. Based on the court’s findings, we find that the trial court’s ruling was not an abuse of discretion. The court’s factual findings and credibility determinations are supported by the record and we cannot conclude that no reasonable person would agree with its decision.

¶ 36 4. 503(g) Trust

¶ 37 Richard argues that the trial court abused its discretion when it imposed a trust under section 503(g) of the Act (750 ILCS 5/503(g)(West 2016)). Specifically, he claims that he is unable to contribute to the children’s expenses and that this inability has been exacerbated by the trial court’s denial of maintenance and relief from his obligation to pay interim attorney fees. He also alleges that Joan had the financial ability to support both him and the parties’ minor children. Joan responds that the trial court did not abuse its discretion because Richard claimed he was *unable* to pay child support and the evidence shows that he was *unwilling* to pay even though he continued to enjoy a comfortable lifestyle while Joan bore the responsibilities of primary provider for the children with little assistance from him.

¶ 38 Section 503(g) allows the court to establish a trust fund for the children of the parties under certain conditions, stating:

“The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, physical and mental health, and general welfare of any minor, dependent, or incompetent child of the parties.”

A need for such protection arises when the noncustodial parent is unwilling or unable to make child support payments. *Liszka*, 2016 IL App (3d) 150238, ¶ 77. The decision whether to impose a trust under section 503(g) of the Act is reviewed under the abuse of discretion standard. *Id.*

¶ 39 The court found that Richard was unwilling to support his children in that he was intentionally avoiding his financial obligations to them because he refused to “maximize his work” despite his physical ability and employment opportunities. The court also found that, although Richard claimed that he could not support his children at the time, he “continued to entertain himself and maintain a very comfortable standard of living.” The court’s ruling is supported by the evidence showing that (1) Richard had received income from construction jobs which he failed to disclose; (2) even though he had the money, he *chose* not to pay the \$2500 lien that was impeding his ability to secure \$89,100 worth of construction jobs for the city of Joliet; and (3) his claims of physical inability to work were belied by his failure to provide any medical evidence of a disabling condition and by photos and videos depicting him working without apparent physical limitations. There, we determine that the trial court did not abuse its discretion in imposing a 503(g) trust.

¶ 40

5. Dissipation

¶ 41

Richard claims that the trial court abused its discretion when it found that he dissipated \$46,789 from the marital property because the evidence shows that most of the funds were used to pay for necessary, appropriate, and legitimate living expenses. Although Richard claims Joan dissipated more funds than he did when she took \$75,000 to \$79,000 from the marital property to pay for her attorney fees, we can find nothing in the record to show his allegation was ever put in issue by filing the statutorily-required notice of intent to claim dissipation. See 750 ILCS 5/503(d)(2)(i) (West 2014). We assume that omission explains the absence of a ruling on that allegation.

¶ 42

Dissipation occurs when a party uses marital property for his or her sole benefit for a purpose unrelated to the marriage at the time that the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 33. Dissipation is one of the factors in section 503(d) of the Marriage Act that a trial court must consider in allocating marital property. *Id.* In particular, section 503(d)(2) states:

“(d) In a proceeding for dissolution of marriage or declaration of invalidity of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse’s non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

(2) the dissipation by each party of the marital property, provided that a party's claim of dissipation is subject to the following conditions:

(i) a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;

(ii) the notice of intent to claim dissipation shall contain, at a minimum, a date or period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;

(iii) a certificate or service of the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules;

(iv) no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event prior to 5 years before the filing of the petition for dissolution of marriage.” 750 ILCS 5/503(d)(2) (West 2014)).

¶ 43 A party does not dissipate when spending marital assets for legitimate family expenses and necessary and appropriate purposes. *In re Marriage of Carter*, 317 Ill. App. 3d 546, 551 (2000). However, a court may still find dissipation where a spouse's use of marital funds for his or her own living expenses could be shown to be selfish and excessive and improper as to

constitute an outright waste of marital funds. *Id.* at 551-52. When a party dissipates marital assets, the court may charge the amount dissipated against his or her share of the marital property so as to compensate the other party. *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 550 (1987). Expenditures for attorney fees out of marital assets is a dissipation of marital assets. *In re Marriage of Weiler*, 258 Ill. App. 3d 454, 464 (1994). Whether dissipation has occurred is a question of fact to be determined by the trial court, and such a determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 34.

¶ 44 Joan filed a notice of intent to claim dissipation of assets, arguing that Richard, *inter alia*, withdrew \$46,789.92 from the Harris Bank joint savings account. Richard claims that he used the money for his kids' tuition, his daughter's softball, his truck payments and insurance, maintenance of his truck, his medical deductibles, medicine, and utilities. He submitted his checkbook register and related checks as evidence of these transactions. Richard's truck maintenance, insurance, medical expenses, and utilities were expenses for his sole benefit and constitute dissipation of marital assets. Moreover, the checkbook register does not prove that Richard made the transactions transcribed and, although Richard included written checks in the record, the checks do not show that the payments were made for a legitimate, necessary, and appropriate purpose. Therefore, we hold that the trial court's ruling was not against the manifest weight of the evidence.

¶ 45

B. Cross-Appeal

¶ 46

1. Petition for Interim Attorney Fees

¶ 47

Canulli argues that the trial court failed to expeditiously schedule the petition for interim attorney fees pursuant to section 501(c-1)(1) of the Illinois Marriage and Dissolution of Marriage

Act (705 ILCS 5/501(c-1)(1) (West 2014). Canulli also claims that the trial court failed to consider the statutory factors listed in subsection (c-1)(1) when assessing an interim award and Joan's alleged disgorgement of the marital estate in the amount of \$69,846.29.

¶ 48 Section 501(c-1) of the Act permits a trial court, while a case remains pending, to assess attorney fees and costs in favor of the petitioning party's counsel. *In re Marriage of Radzik and Agrella*, 2011 IL App (2d) 100374, ¶ 40. A party seeking interim attorney fees is expected to file a petition "supported by one or more affidavits that delineate relevant factors." 750 ILCS 5/501(c-1)(1) (West 2016). Also, except for good cause shown, proceedings regarding interim fee awards shall be nonevidentiary, summary, and expeditious. *Id.* "Although an evidentiary hearing is not required under section 501(c-1), an interim fee award must be supported by 'non-testimonial evidence, as submitted by the parties in the form of affidavits, financial disclosure statements, [or] requests for judicial notice.'" *Id.* (quoting *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 319 (2001)). We review for an abuse of discretion the trial court's decision to award attorney fees. *Id.* ¶ 45.

¶ 49 The evidence shows that the trial court acted expeditiously to schedule a hearing on the petition and any delay was caused by Canulli's actions. For instance, Canulli filed the petition on December 2, 2015, and the court set the petition for review on December 4. On December 4, the court gave Joan 14 days to respond to the petition as required under subsection (c-1)(1). On January 8, the court continued the petition to allow Canulli leave to file an amended petition for attorney fees within 14 days and Joan to file a response within 21 days. Canulli failed to file an amended petition within 14 days and, on February 9, he filed another motion for leave to file an amended petition. On February 16, Joan filed a motion to continue all pending motions to trial and the court granted the motion. Although the trial did not take place until May 2, the court's

bases for the continuance were to prevent any further delay of the trial due to the multitude of motions and to allow the parties to present all evidence pertaining to the motions at one proceeding. Under the circumstances, we find that the trial court expeditiously scheduled the petition for interim fees.

¶ 50 Also, once the court determined that Richards had the financial ability to pay his attorney fees, it was not required to consider subsection (c-1)(1) factors or to disgorge funds from Joan's attorney. Subsection (c-1)(1) requires the court to consider certain statutory factors *when assessing an interim award*. 750 ILCS 5/501(c-1)(1) (West 2016). The trial court must assess an interim award *only if* it finds that (1) the opposing party has the financial ability to pay reasonable amounts and (2) *the petitioning party lacks sufficient access to assets or income to pay reasonable amounts*. 750 ILCS 5/501(c-1)(3) (West 2016). Here, the trial court found that Richard had the financial means, resources and ability to pay his attorney fees. This finding negates the statutory requirement that the court assess attorney fees and, consequently, obviates the court's requirement to consider the statutory factors in assessing the interim award.

¶ 51 2. Petition for Contribution of Attorney Fees

¶ 52 Canulli argues that the trial court violated his due process rights when the court did not afford him the opportunity to amend the contribution petition to include additional attorney fees incurred after March 23, 2016, and when it failed to conduct an evidentiary hearing on the petition. Further, Canulli claims his due process rights were violated when the court failed to give him notice of its intent to make a substantive ruling on the petition in its November 7 judgment. Canulli also contends that the court erred when it denied his contribution petition without considering the section 503(j) factors (750 ILCS 5/503(j) (West 2016)).

¶ 53 Generally, attorney fees are the responsibility of the person who received legal services. *In re Marriage of Ziemer*, 189 Ill. App. 3d 966, 969 (1989). However, section 503(j) of the Act permits a trial court to order one party to contribute to the other party's attorney fees. 750 ILCS 5/503(j) (West 2016). The spouse seeking a contribution to fees must establish his or her inability to pay the fees and the other spouse's ability to pay. *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 113. "A party has the financial inability to pay attorney fees if the payment of the fees would strip that party of his or her means of support or undermine the party's financial stability." *Id.* A trial court's decision to award or deny attorney fees under the Act will not be disturbed absent an abuse of discretion. *In re Marriage of Harrison*, 388 Ill. App. 3d 115, 120 (2009).

¶ 54 Canulli argues that the trial court failed to conduct an evidentiary hearing despite its order that it was reserving any issue of attorney fees until after the court enters its dissolution of marriage judgment. However, the record shows that the petition was heard and decided in accordance with section 503(j). The court granted Joan's motion to continue temporary motions to the trial on the basis that it would be in the interest of justice to allow all the evidence to be heard in one proceeding. During trial, over Joan's attorney's objection, the court allowed Canulli to question Richard so Canulli could "get into the evidence" testimony about Richard's ability to pay attorney fees. Furthermore, substantial evidence concerning Richard and Joan's overall finances was presented at trial.

¶ 55 Canulli asserts that the trial court did not afford him the opportunity to amend the petition to include additional attorney fees incurred after March 23, 2016. However, the record shows that the court allowed Canulli full opportunity to present any evidence concerning attorney fees at trial. Moreover, the record presents no indication that the court precluded Canulli from

amending his petition to inform the court of any updated attorney fees. Canulli admitted he never filed an updated contribution petition after the one filed on March 28, 2016.

¶ 56 Canulli relies on *People v. Kitchen*, 189 Ill. 2d 424 (1999), to support his argument that the court failed to give him notice that it was including a ruling on the contribution petition in its November 7 order. In *Kitchen*, the supreme court found that the trial court failed to give the respondent proper notice when it dismissed the respondent's postconviction petition during a hearing scheduled for the resolution of a discovery dispute without notice to the parties or a motion to dismiss by the State. *Id.* at 434-35. The factual scenario in *Kitchen* is distinguishable from this case because the trial court here ordered that the contribution petition would be continued to the May 2 trial so all of the issues could be heard at one time and the court allowed Canulli to elicit testimony and present evidence concerning the petition at trial. The parties were aware of the trial court's April 2016 order to continue the petition to trial and, unlike the circumstances in *Kitchen*, there was no surprise that the court would decide all issues including the petition for contribution after it continued and heard evidence at trial.

¶ 57 Canulli claims that the court failed to consider the section 503(j) factors when it denied his petition for contribution fees. Subsection (j)(2) states that “*Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504.*” Once the trial court has weighed marital property and maintenance criterion, “it will have enough of a record to *determine the contribution amount.*” (Emphasis added.) *In Re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 596 (2001). Here, the trial court did not award contribution and, therefore, it had no reason to consider the marital property criteria under section 503 or the maintenance criteria under section 504. Thus, we find that the trial court's

ruling was not an abuse of discretion. Because we find the trial court's ruling on both petitions was not an abuse of discretion, we decline to address Canulli's request that the petitions be reviewed by a different judge on remand.

¶ 58

CONCLUSION

¶ 59

The judgment of the circuit court of Will County is affirmed.

¶ 60

Affirmed.