

No. 1-19-0574

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of Cook County.
LISA COX,)	
)	
Petitioner-Appellee,)	
)	No. 15 D 07069
and)	
)	
KEVIN COX,)	
)	Honorable Lionel Jean-Baptiste,
Respondent-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent’s posttrial filing was a motion for a new trial and not a section 2-1401 petition; trial court’s findings were not against the manifest weight of the evidence and the distribution of property was not an abuse of discretion; respondent could not raise challenge to a change in the attorney fees order where respondent’s counsel suggested the change; affirmed.

¶ 2 Respondent, Kevin Cox (Kevin), appeals orders of the circuit court that distributed property following the dissolution of his marriage to petitioner, Lisa Cox (Lisa), and denied his motion for a new trial. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married twice and the present appeal concerns their second divorce. Kevin and Lisa were initially divorced on March 4, 2010, and remarried on August 17, 2012. Kevin and Lisa began living separately from each other in May 2015. Lisa filed a petition for dissolution of marriage on August 3, 2015. No children were born to the parties during the marriage, but the parties acquired a dog, Champion.

¶ 5 A. Trial

¶ 6 A trial was held on August 10, 2017, and September 14, 2017, where Lisa appeared *pro se* and Kevin was represented by counsel. We summarize the testimony and evidence presented about the items of property that the parties refer to on appeal.

¶ 7 Lisa stated at trial that she left the parties' Park Ridge home on May 21, 2015, making two trips with her car to take her personal property and Champion. Lisa acknowledged a charge she incurred from Two Men and a Truck in May 2015, which she explained was related to a purchase of furniture from her former employer. Lisa submitted and explained numerous documents to the court regarding the parties' assets and financial information.

¶ 8 In his testimony, Kevin stated that he sought reimbursement for his contribution to a vacant lot known as the Gerber property, which had been awarded to Lisa in a previous divorce and later sold. Kevin recalled that payments for lawn care and taxes came out of marital funds and that Kevin did the lawn care himself for a few years. The Gerber property was the subject of a lawsuit,

which resulted in a \$15,000 settlement that was being held in escrow. Kevin wanted the full settlement amount as reimbursement for the time, effort, and money that were spent for the lawsuit.

¶ 9 Also raised at trial were the parties' cars, including a Mustang that Lisa acquired before the marriage. She left the Mustang at the parties' Park Ridge home when the parties separated in May 2015, and so the car was in Kevin's possession for a time. The court eventually ordered the Mustang placed at a neutral location. An issue at trial was the condition of the Mustang when Lisa retrieved it. Kevin denied that the Mustang was damaged after Lisa left and maintained that the car was damaged while Lisa had it, before they were separated. Kevin also stated that he and Lisa bought a Jaguar for \$10,000, with each of them contributing \$5,000. Lisa had presented an exhibit to show that money was loaned from her 401(k) for the Jaguar, but Kevin denied that this money was used for the car, citing cost differences between the purchase and repair costs and the loan amount. Kevin wanted to be awarded the Jaguar and for Lisa to be responsible for the amount loaned from her 401(k). Other cars mentioned at trial were a Chevy Tahoe, Chevy pickup, and Range Rover. Kevin did not assign a value to the Tahoe and denied that he sold the pickup. Kevin further stated that the pickup did not run and had zero value. Lisa maintained that she bought the Range Rover in June 2015 with proceeds from the sale of the Gerber property. She admitted that the sale of the Gerber property closed on June 29, 2015, but the Range Rover was bought two days earlier, on June 27, 2015. Lisa explained that the seller held the car until the check from the Gerber property sale had cleared.

¶ 10 According to Kevin, Lisa destroyed the parties' Park Ridge home and "trashed everything" when she left. Kevin stated that this happened in February, "[n]ot when she moved out. I found out about it a couple days later. But she claimed she moved out of there in what, January? Or I'm sorry. June she claims." Kevin recalled that Lisa "took everything" that belonged to Kevin and

everything that was in the home, including computers, an iPad, couches, the kitchen table, and other furniture. Lisa also opened the hot water heater, which flooded the basement. Lisa destroyed the dishwasher, left the stove on full blast, and left open the door to the refrigerator. Kevin described some of the bills for the resulting repairs. Kevin added that whatever Lisa did not want she flushed down the toilet or poured down the sink, which caused damage as well.

¶ 11 Kevin also testified about personal property that Lisa allegedly took. From a safe, Lisa took jewelry that was intended for Kevin's daughter, watches, rings, a passport, and \$178,000 in cash. Lisa took three guns as well: a pink Ruger¹, a Walther, and a Kimber. Kevin stated that he bought all three guns and the pink Ruger and Walther were bought for his daughter. Kevin denied that he gave the pink Ruger to Lisa as a gift after she received her concealed carry license. Lisa admitted into evidence a receipt for the Walther that stated the date of purchase was May 6, 2012. Kevin explained that Lisa's name, and not his name, was on the receipt due to the store's buying procedures. Kevin admitted that he did not have a police report related to Lisa's destruction of the home. He had not had time to file an insurance claim because he had to put the house back together. Kevin stated that he had pictures, and when Lisa asked whether he had brought the pictures to court, Kevin replied, "It's possible. I can go through my stuff."

¶ 12 On November 7, 2017, the court granted the judgment for dissolution of marriage and entered a written order that stated as follows. Each party had a 401(k) account to which each contributed during the course of the marriage. The parties were "obligated to share the marital portion of the 401(k) account accumulated or that should have been accumulated from the date of the marriage *** to the date the Petition for Dissolution was filed ***." Withdrawals made from each 401(k) account would be added back in calculating the balance to be divided between the

¹ The trial court's written order refers to this gun as a Lugar, but the trial transcript refers to this gun as a Ruger.

parties. Within 30 days, the parties were required to submit a specific accounting of their 401(k) calculations and the amount due to or from each other. The Gerber property was Lisa's nonmarital property. The court denied Kevin's request for the entire lawsuit-related settlement and instead awarded him \$7,500 for his 50 percent share of the resolution of the lawsuit. As her premarital asset, the Mustang was awarded to Lisa. The court found that Lisa credibly testified that the Mustang was in excellent condition when she separated from Kevin and Kevin was ordered to compensate Lisa for damages. Kevin was awarded the Jaguar, which was bought with marital assets in the form of a loan from Lisa's 401(k). Lisa was credited the amount borrowed for the Jaguar from her 401(k). Also, Lisa was awarded the Range Rover because it was bought with funds from the sale of the Gerber property and the Tahoe, which were nonmarital, but she was ordered to reimburse the marital estate 50 percent of monthly payments made on the car loan. Proceeds from the sale of a 1994 Chevy pickup remained Kevin's property, as was the value given to Lisa for a Tahoe towards the purchase of the Land Rover.²

¶ 13 The court further found that Kevin's testimony about all that Lisa took or destroyed was incredible. Kevin did not show any proof to support his claim, such as photos or police reports. The court denied Kevin's request for compensation for losses. Each gun was awarded to each person in whose name it was registered and "[w]hatever proof of registration is to be provided within 30 days in writing." Turning to expenses, Lisa was to be reimbursed for 50 percent of the value of certain bills paid on Kevin's behalf since the separation, including insurance payments. Both parties were ordered to pay 50 percent of the total cost of attorney fees incurred during the course of the litigation for dissolution of the marriage. Lastly, Kevin was awarded custody of the dog, Champion, as his sole possession.

² Land Rover appears to be used interchangeably with Range Rover.

¶ 14 The court entered a second written order on November 7, 2017. There, Kevin’s counsel was given leave to withdraw. Within 30 days, both parties were required to present an accounting of attorney fees incurred and paid, as well as an accounting of their respective 401(k) accounts. Also within 30 days, Lisa was ordered to provide proof of assessment of damages to the Mustang.

¶ 15 B. Additional Proceedings

¶ 16 On November 16, 2017, Lisa filed an emergency motion for reconsideration, rehearing, or in the alternative, for a new trial, which challenged the award of Champion to Kevin. The court subsequently found that the matter raised by Lisa’s motion was not an emergency and continued the proceedings to a later date.

¶ 17 On December 7, 2017, the court entered a written order recalling that the parties were ordered to return to court “for status during which time the court would order with specificity the allocation of the assets and debts of the parties as to one another.” Lisa appeared in court, but Kevin did not. For each asset, the court awarded credits with specific dollar amounts to the party to whom a credit was due.

¶ 18 The record contains a “Motion to Vacate Coversheet” filed by Kevin on December 15, 2017. Kevin indicated that he sought to vacate, modify, reconsider, or reinstate a final order. The actual motion is not in the record. On February 15, 2018, the court granted Kevin’s motion to vacate the order of December 7, 2017. Kevin appeared with counsel and Lisa continued to appear *pro se*. The parties were ordered to exchange documents identified in the November 7, 2017, order.

¶ 19 At a hearing on June 7, 2018, Kevin’s counsel stated that there was not yet a final order. He asserted that until there was an order that disposed of issues relating to the 401(k) accounts, Mustang, Jaguar, and attorney fees, there was not a final and appealable order. Kevin’s counsel also noted that the parties were still involved with distributing property. In contrast, the court

maintained that there was a final order of dissolution and a number of properties had been allocated and awarded.

¶ 20 Turning to specific items, the court stated that still unresolved was how to offset the assets that the parties accumulated in their 401(k) accounts from the date of the marriage to the date the petition for dissolution was filed. After reviewing statements and eliciting discussion about the 401(k) accounts, the court stated that the “401(k) is resolved.” As for the Gerber property, Kevin’s counsel stated that almost \$60,000 in marital funds was used to pay for the lawsuit. The court responded that there was no new issue raised with the Gerber property and all that remained was to execute the corresponding portion of the November 7 order.

¶ 21 The proceeding also addressed the parties’ guns. Kevin’s counsel stated that using proof of registration was not possible and framed the key questions as who purchased the guns and for whom the pink Ruger was intended. Lisa and Kevin disputed whether the pink Ruger was given to Lisa or was nonmarital property that belonged to Kevin’s daughter. Kevin’s counsel presented documents for the pink Ruger and admitted it was purchased during the marriage. A receipt for the pink Ruger indicated that Kevin was billed for the gun. Lisa noted that she had a receipt for the Walther that was dated before she and Kevin were married. After the court awarded the Kimber to Kevin and the pink Ruger and Walther to Lisa, Kevin’s counsel offered to provide testimony. However, the court found that testimony was provided at trial, where “[t]here were a lot of different statements made *** about the guns.” The court considered the gun matter settled.

¶ 22 As for the parties’ cars, the court recalled that after taking the Mustang to a mechanic to assess damages, Lisa reported that the damages totaled \$7,209.37 and presented receipts for repairs. Kevin’s counsel asserted that several repairs were unreasonable. The parties were unsuccessful at reaching a settlement, so the court stated that it would make a determination, noting

that “nothing is more telling than what happens during the course of a trial as to the credibility of the parties.” Turning to the Jaguar, Kevin’s counsel posited that Lisa should only be credited for the purchase price of \$10,894. Meanwhile, Lisa sought a credit of \$14,851 to reflect additional money spent to make the car run properly. Lisa reported the amount and timing of the monthly payments for the Range Rover and presented the retail installment contract for the car. One more car was also mentioned—a Chevy pickup—which Kevin’s counsel stated did not exist.

¶ 23 On the issue of attorney fees, the parties presented bills from the attorneys who had represented them. Kevin’s counsel suggested that because the parties’ unpaid obligations were approximately equal, “that these just offset and that they be responsible for the bills that have been issued to each of them.” Kevin’s counsel stated “that would accomplish this 50/50 without keeping the case alive for potential mediation *** and *** they each pay their own fees because it would come out to 50/50.”

¶ 24 In a written order entered after the hearing, the court stated in part that Lisa was to produce any and all documents and other tangible things that pertained to damages to the Mustang. Further, the court would take the issue of credits for the Jaguar under advisement. The matter was continued to June 28, 2018, for further hearing.

¶ 25 On June 28, 2018, Kevin filed written objections to Lisa’s claims of damage to the Mustang, asserting that Lisa did not prove that there were damages to the Mustang that Kevin caused. Kevin also detailed various aspects of the alleged damage and contended that the items replaced either did not need to be replaced or were not damaged by Kevin.

¶ 26 At a hearing on June 28, 2018, Kevin’s counsel stated that the remaining issues to resolve were any money to be charged to Kevin for damages to the Mustang and Lisa’s challenge to

Kevin's custody of Champion. The court stated that only Champion would be dealt with at the hearing, and "the car and everything else we'll have to come back for."

¶ 27 On August 21, 2018, the court entered a written order that awarded Lisa \$3,000 for damages to the Mustang. Champion would remain with Kevin. On September 25, 2018, the court entered a written order stating that the matter was set for a status report on a final order on October 2, 2018.

¶ 28 On October 2, 2018, the court entered a written order that was labeled "Final Order," stating that the matter came before the court "for entry of final order disposing of remaining property issues." The order restated and incorporated the court's findings from the order entered November 7, 2017, and added other findings. We summarize the order as follows. After considering what each party accumulated in their 401(k) accounts during the marriage, the court awarded Kevin a credit of \$10,938. Lisa was awarded a credit of \$2,000 relating to marital bills. The court noted that the Gerber property had been sold and any sale proceeds belonged to Lisa. From the settlement, Lisa and Kevin were each awarded \$7,500. The order also addressed the parties' cars. The court found that Lisa had shown proof of repairs for damage to the Mustang and Kevin was ordered to compensate Lisa \$3,000. The court also made findings as to the amount that was borrowed from Lisa's 401(k) to purchase and repair the Jaguar. Lisa was credited with \$10,894, which was the amount borrowed from her 401(k), and the Jaguar was still awarded to Kevin. The court declined to reimburse Lisa for later loans from her 401(k) for two engines because those funds came from the marital portion of Lisa's 401(k) and the parties benefitted from using the Jaguar during the marriage. Further, Kevin was credited with \$249.26 relating to a monthly payment that Lisa made for the Range Rover out of marital assets. Proceeds from a sale of the Chevy pickup belonged to Kevin. The court awarded Lisa all jewelry and personal property in her

possession and awarded Kevin all jewelry and personal property in his possession. Lisa was awarded the pink Ruger and Walther guns, while Kevin was awarded the Kimber gun. The court also vacated its prior attorney fees order and ordered each party to pay their own attorney fees through October 2, 2018.

¶ 29 The court found that as a result of various calculations, Lisa had a credit of \$23,708 and Kevin had a credit of \$18,438, leaving Lisa with a net positive credit of \$5,270. Deducting that amount from the \$7,500 due to Kevin from the Gerber property settlement resulted in a payment to Kevin of \$2,230. The court included a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason to delay enforcement or appeal.

¶ 30 C. Motion for a New Trial

¶ 31 On October 30, 2018, Kevin filed a motion for a new trial, asserting in part that the evidence was insufficient to support the judgment and numerous rulings and findings were against the manifest weight of the evidence.

¶ 32 On February 20, 2019, the court entered a written order that treated Kevin's motion as a section 2-1401 petition under the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)). The court recalled the procedural history of the case, stating that the order entered on November 7, 2017, was a final order "dissolving the parties' marriage, allocating marital and non-marital property rights amongst them, and requesting additional financial information to enable this Court to calculate the monetary value of each party's allocated shares with greater particularity." The order entered on December 7, 2017, provided that "greater particularity *** without changing the substantive rights of the parties that had already been determined." After the December 7 order was vacated, and following almost eight months of subsequent litigation, the court entered an order on October 2, 2018, that "clarified and provided greater particularity on

details” that were merely incidental to the ultimate rights that were previously adjudicated. According to the court, Kevin’s motion challenged matters that were settled nearly a year earlier, in the order entered on November 7, 2017. The court stated that a section 2-1401 petition could not be used to relitigate questions that were previously adjudicated and denied Kevin’s motion.

¶ 33 On March 19, 2019, Kevin filed a notice of appeal that sought reversal of the orders dated February 20, 2019, October 2, 2018, and November 7, 2017.

¶ 34

II. ANALYSIS

¶ 35

A. Kevin’s Posttrial Filing

¶ 36 We first address a threshold issue raised by Kevin on appeal. He contends that the trial court improperly treated his motion for a new trial as a section 2-1401 petition. Kevin argues that the trial court incorrectly found that the final order in this case was the dissolution judgment entered on November 7, 2017, even though that order only partially adjudicated the parties’ property rights. Kevin asserts that the presentment of additional evidence on several property distribution matters was not merely incidental to the ultimate rights adjudicated on November 7, 2017.

¶ 37 We agree with Kevin. As background, section 2-1401 of the Code allows a party to seek relief from a final judgment more than 30 days after that judgment was entered. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 101 (2002). The purpose of a section 2-1401 petition is to bring before the court matters of fact that were unknown when the judgment was entered, and if known, would have affected or altered the judgment that was entered. *In re Marriage of Hoppe*, 220 Ill. App. 3d 271, 282 (1991). In Kevin’s view, his filing was a postjudgment motion filed under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2016)), which seeks to modify or vacate a judgment, or a rehearing, retrial, or other relief. *In re Marriage of Hillinger*, 146 Ill. App.

3d 549, 555 (1986). A postjudgment motion must be filed within 30 days after entry of the judgment. 735 ILCS 5/2-1203(a) (West 2016).

¶ 38 Keeping in mind the differences between a section 2-1401 petition and a postjudgment motion, our next task is to identify the date of the final order in this matter. If the final order was entered on November 7, 2017, as the trial court found, then Kevin’s motion—filed on October 30, 2018—was filed well past the 30-day deadline for postjudgment motions and was properly treated as a section 2-1401 petition. If the final order was entered on October 2, 2018, as Kevin maintains, then his motion was a timely filed postjudgment motion.

¶ 39 The order entered on November 7, 2017, dissolved the parties’ marriage, but was not a final order. A petition for dissolution advances a single claim—a request for an order dissolving the parties’ marriage. *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). The other issues involved, such as custody, property disposition, and support, “are merely questions which are *ancillary* to the cause of action.” (Emphasis in original.) *Id.* The other issues are not separate, unrelated claims, but rather are separate issues relating to the same claim. *Id.* “It is difficult to conceive of a situation in which the issues are more interrelated than those involved in a dissolution proceeding.” *Id.* Until all of the ancillary issues are resolved, a dissolution judgment is not final. *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13. “Stated differently, generally only a judgment that does not reserve any issues for later determination is final and appealable.” *Id.* There are exceptions that “usually involve unique and compelling circumstances” (*id.* ¶ 14) and are not alleged to apply here.

¶ 40 The dissolution judgment entered on November 7, 2017, left several property distribution matters unresolved. That order stated that the parties were “obligated to share” the marital portion of their 401(k) accounts, but did not provide specifics for how that sharing would occur. Indeed,

the parties were ordered to submit an accounting of their 401(k) accounts. The court only pronounced the issue resolved at a June 2018 proceeding, after more documents had been submitted and discussed. Although the dissolution judgment awarded the Mustang to Lisa, a question remained about the amount that Kevin had to compensate Lisa for damages. This, too, was not resolved until after more proceedings. Other issues not decided until after further proceedings and later memorialized in the October 2, 2018, order included the exact amount borrowed from Lisa's 401(k) for the Jaguar and the amount of the monthly payments for the Range Rover. That the parties continued to litigate several property issues and present additional evidence after the dissolution judgment indicates that the dissolution judgment was not final. See *id.* ¶ 15 (dissolution judgment's lack of finality was "evident from the record inasmuch as the parties continued to litigate the division of personal property"). The dissolution judgment set forth general principles for dividing the parties' property, but the October 2, 2018, order included necessary details for how the property would be distributed and how much money was due to each party. See *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989) (judgment is final for purposes of appeal "if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment").

¶ 41 We also note that a continuance order entered in September 2018 stated that a final order was forthcoming. And, the October 2, 2018, order is itself labeled "Final Order" and included a Rule 304(a) finding. While labeling an order as "final" is not dispositive (*Hillinger*, 146 Ill. App. 3d at 554), the trial court's own terminology undercuts its position that the November 7, 2017, order was the final order.

¶ 42 The October 2, 2018, order was a final order because it resolved all of the issues that were ancillary to the dissolution judgment. Thus, Kevin's motion for a new trial was a timely filed

postjudgment motion. Kevin timely appealed the denial of his motion for a new trial and we have jurisdiction to address his arguments about the dissolution judgment and property distribution. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (notice of appeal must be filed within 30 days of the order disposing of the last pending postjudgment motion); *In re Marriage of Click*, 169 Ill. App. 3d 48, 54 (1988) (an appeal from a final judgment draws into issue all prior, nonfinal orders that produced the final judgment).

¶ 43 B. Compliance with Illinois Supreme Court Rules

¶ 44 Next, Kevin contends that we should decide the appeal based only on his brief because Lisa’s brief violates Illinois Supreme Court Rule 341 (eff. May 25, 2018). Kevin asserts that Lisa’s brief lacks any cogent legal argument or relevant citation to legal authority.

¶ 45 That Lisa appears *pro se* does not excuse her from complying as nearly as possible to the Illinois Supreme Court Rules for practice in the appellate court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. The procedural rules that govern the content and format of appellate briefs are mandatory. *Id.* As Kevin notes, Lisa’s brief does not consistently cite to the record or to authority. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). However, we will not strike Lisa’s brief because the violations of Rule 341 “are not so flagrant as to hinder or preclude review.” *Canel & Hale, Ltd. v. Tobin*, 304 Ill. App. 3d 906, 911 (1999). For completeness, we note that the Illinois Supreme Court rules also apply to Kevin, whose brief improperly cites to unpublished orders and does not consistently support its arguments with citations to the record or to authority. See Ill. S. Ct. R. 23(b), (e)(1) (eff. Apr. 1, 2018); Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Both parties are reminded that our supreme court rules are not suggestions and have the force of law. *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002).

¶ 46 C. Distribution of Property

¶ 47 Next, we turn to Kevin’s challenge to the trial court’s distribution of the parties’ property. Kevin argues that certain findings of the trial court were against the manifest weight of the evidence and certain rulings were an abuse of discretion.

¶ 48 Section 503 of the Illinois Marriage and Dissolution of Marriage Act governs the disposition of property in a dissolution of marriage proceeding. 750 ILCS 5/503 (West 2016). All property owned by the parties belongs to the estate of either spouse or the marital estate. *In re Marriage of James & Wynkoop*, 2018 IL App (2d) 170627, ¶ 20. Before disposing of property, the court must classify the property as either marital or nonmarital. *In re Marriage of Raad*, 301 Ill. App. 3d 683, 686 (1998). Then, the trial court divides the property into “ ‘just proportions.’ ” *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22 (citing 750 ILCS 5/503(d) (West 2012)). Dividing marital property in just proportions “does not require mathematical equality, but rather, the touchstone of proper apportionment is whether it is equitable in nature.” (Internal quotation marks omitted.) *In re Marriage of Evanoff & Tomasek*, 2016 IL App (1st) 150017, ¶ 30.

¶ 49 Each case rests on its own facts. *Id.* ¶ 45. Relevant factors in dividing marital property include each party’s contribution to the acquisition, preservation, or increase or decrease in the value of the marital or non-marital property, the value of property assigned to each spouse, the relative economic circumstances of each spouse when the division becomes effective, and the spouses’ age, health, occupation, and amount and sources of income. 750 ILCS 5/503(d) (West 2016).

¶ 50 A reviewing court applies the manifest weight of evidence standard to the factual findings for each factor on which a trial court bases its property disposition. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). A finding is against the manifest weight of the evidence only if

the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Meanwhile, the abuse of discretion standard of review applies to the trial court's final property disposition. *Vancura*, 356 Ill. App. 3d at 205. "An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41. The trial court has considerable discretion to exercise its judgment in resolving matrimonial financial matters because an equitable division "depends on more than merely an analysis of dollars and cents." *Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22. In part, the division is informed by the court's observations of the parties as they testified and responded at trial and the economic circumstances of each party. *Id.*

¶ 51 One of Kevin's claimed errors stems from an incorrect reading of the trial court's final order. Kevin states that the trial court should not have given Lisa a credit for money borrowed from her 401(k) to purchase two engines for the Jaguar. Kevin asserts that there was insufficient evidence that the money borrowed was actually used for that purpose. However, in the order entered on October 2, 2018, the court denied Lisa's claim to be reimbursed for loans from her 401(k) for two engines because those expenses came from the marital portion of the 401(k) and the parties benefitted from the use of the Jaguar during the marriage. Moreover, Lisa was credited \$10,894 for the Jaguar, which Kevin's counsel stated in June 2018 was the amount that Lisa should be credited. Kevin apparently misread the trial court's order and Lisa was not awarded a credit for purchasing two engines for the Jaguar.

¶ 52 Kevin's other claimed errors relate to the parties' cars, post-separation expenses, the division of the settlement proceeds from the Gerber property, and personal property allegedly taken or destroyed by Lisa. Kevin merely asserts that various findings and allocations were

incorrect, but does not provide support for those assertions with developed arguments and citations to the record. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on”). It is not the function of this court to identify for Kevin the pieces of evidence that the trial court missed that would have supported his arguments. See *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 36 (“ [t]he appellate court is not a repository into which an appellant may foist the burden of argument and research’ ”).

¶ 53 Still, we will address the merits of one of Kevin’s claimed errors because it is supported by a developed argument. Kevin asserts that the trial court’s finding that he did not testify credibly about the personal property removed and destroyed from the Park Ridge home was against the manifest weight of the evidence. Kevin also argues that the trial court abused its discretion when it did not award him the property that Lisa removed. According to Kevin, Lisa’s unsworn testimony was not evidence and his uncontradicted testimony was not inherently improbable. Kevin further states that Lisa did not present evidence to refute his testimony.

¶ 54 Based on our review of the trial transcript, Lisa, who appeared *pro se*, was indeed not sworn as a witness. Yet, Kevin’s counsel never objected. To the extent that Kevin contends that the judgment should be reversed because Lisa was not sworn as a witness, the issue is forfeited. *Frank v. Hawkins*, 383 Ill. App. 3d 799, 812 (2008) (issue of witnesses not being sworn was forfeited where counsel failed to bring the irregularity to the attention of the trial court). As an aside, even without her testimony, Lisa submitted multiple exhibits to support her position.

¶ 55 Moreover, the trial court’s finding that Kevin’s testimony was incredible was not against the manifest weight of the evidence. At trial, Kevin described the damage that Lisa allegedly did to the Park Ridge home and the items she allegedly took. At the same time, Kevin struggled to

recall when this happened. Kevin admitted that he did not have a police report or insurance claim, though he maintained that he did not have time to file one. He stated it was “possible” he had pictures, but had to “go through my stuff.” The trial court did not believe Kevin’s claim that Lisa took personal property and destroyed the Park Ridge Home. The trial court was in the best position to determine the parties’ credibility and was free to reject Kevin’s testimony. *Evanoff & Tomasek*, 2016 IL App (1st) 150017, ¶ 41. Further, Kevin sought to be compensated for his losses, but did not present proof for all of his claimed damages or the items allegedly taken. Where a party does not offer evidence of an asset’s value, the party cannot complain as to the court’s disposition of that asset. *Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 29. Based on the lack of evidence that Lisa improperly removed or destroyed anything, the trial court did not abuse its discretion when it awarded Kevin and Lisa the personal property they each had in their possession.

¶ 56 The remainder of Kevin’s challenges to the distribution of property are not adequately supported. Moreover, Kevin’s argument is an improper request to reweigh evidence that was presented below. The trial court “has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain.” *In re D.F.*, 201 Ill. 2d 476, 499 (2002). A reviewing court may not substitute its judgment for that of the trial court about the credibility of the witnesses, the weight of the evidence, or the inferences to be drawn. *Id.* The record indicates that the trial court arrived at its findings based on the evidence presented. And, the distribution of property was not unreasonable, arbitrary, or fanciful.

¶ 57 D. Attorney Fees Order

¶ 58 Kevin next contends that he was denied due process of law when, in its final order, the trial court *sua sponte* vacated its prior order about attorney fees. In the November 7, 2017, order, both parties were ordered to pay 50 percent of the total cost of attorney fees incurred. In the order

entered on October 2, 2018, the trial court vacated the prior order for attorney fees and ordered the parties to each pay their own attorney fees. Kevin argues that the change was made without notice and Kevin was not given a meaningful hearing on the matter.

¶ 59 Kevin's claim is curious because his counsel suggested changing the attorney fees order. At the hearing held on June 7, 2018, Kevin's counsel stated that the parties' unpaid attorney fees were about equal and that the parties should "be responsible for the bills that have been issued to each of them." Kevin's counsel added that his proposed arrangement would accomplish a 50/50 split without prolonging the proceedings. A party cannot ask to proceed in one way at trial and then argue on appeal that the requested action was error. *In re Marriage of Reidy*, 2018 IL App (1st) 170054, ¶ 29. See also *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004); *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 58. Kevin received what his counsel requested and he cannot now challenge that request on appeal.

¶ 60 E. Claim of Failure to Join an Indispensable Party

¶ 61 Lastly, Kevin contends that the judgment should be vacated for failure to join an indispensable party. According to Kevin, his daughter owned the two guns awarded to Lisa, as well as some of the jewelry at issue.

¶ 62 Kevin's argument is a challenge to the trial court's property distribution, even though he attempts to use a different legal framework. It was Kevin's burden to prove that certain property was nonmarital. *James & Wynkoop*, 2018 IL App (2d) 170627, ¶ 28. Further, the trial court's classification of property as marital or nonmarital is not disturbed unless it is against the manifest weight of the evidence. *Raad*, 301 Ill. App. 3d 683, 686 (1998). And as stated above, the trial court's final property disposition is reviewed for an abuse of discretion. *Vancura*, 356 Ill. App. 3d 200, 205 (2005). Kevin and Lisa testified and admitted evidence about the guns. The court heard

Kevin's testimony about the jewelry. Some evidence may have conflicted, but it is not our function to reweigh it. See *D.F.*, 201 Ill. 2d 476, 499 (2002) (reviewing court does not substitute its judgment for that of the trial court on issues of witness credibility, the weight to be given to the evidence, or the inferences to be drawn). The trial court's decision to award the guns and jewelry as it did was supported by the evidence. See *In re Marriage of Meyer*, 140 Ill. App. 3d 1031, 1035 (1986) (where the wife argued that certain items belonged to the parties' children and the evidence was disputed, trial court's decision to award the items to the wife was not against the manifest weight of the evidence).

¶ 63

III. CONCLUSION

¶ 64 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 65 Affirmed.