2020 IL App (2d) 180759-U
No. 2-18-0759
Order filed November 4, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ELISA POSNER, Petitioner-Appellee, and WALTER POSNER, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 16-D-457 Honorable Joseph V. Salvi, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Birkett and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court presumed that the order denying the appellant's motion to continue the trial was in conformity with law and had a sufficient factual basis, because the record on appeal did not contain a transcript of the hearing on that motion. The trial court did not abuse its discretion in reserving the issue of the appellee's right to maintenance, but the court erred in reserving that issue indefinitely. The order classifying certain jewelry as the appellee's nonmarital property was not against the manifest weight of the evidence. The order classifying a pawnshop as marital property and awarding the appellee a portion of its value was not against the manifest weight of the evidence. The order allocating the proceeds and expenses associated with the sale of the marital residence was not an abuse of discretion. The trial court did not abuse its discretion in ordering the appellant to contribute to the appellee's attorney fees. Thus, the appellate court affirmed the judgment in part, reversed it in part, and remanded the matter with directions.

¶ 2 Respondent, Walter Posner, appeals the judgment entered in the circuit court of Lake County dissolving his marriage to petitioner, Elisa Posner. Walter argues that the court erred by (1) denying his motion to continue the trial, (2) reserving the issue of Elisa's right to maintenance, (3) classifying certain jewelry as Elisa's nonmarital property, (4) classifying a pawnshop as marital property and then awarding Elisa a portion of its value, (5) inequitably allocating the expenses and proceeds associated with the sale of the marital residence, and (6) requiring Walter to contribute to Elisa's attorney fees. We affirm in part, reverse in part, and remand the matter with directions.

¶ 3 I. BACKGROUND

¶ 4 Walter and Elisa married in 1986. Three children, each of whom are now adults, were born to the couple. In March 2016, Elisa petitioned to dissolve the marriage. The matter proceeded to a seven-day trial in March 2018.

¶ 5 The evidence showed that Walter worked at the Chicago Mercantile Exchange as a broker during most of the marriage. He and Elisa also routinely invested when Walter and his parents identified opportunities. Elisa was college-educated and previously was qualified as a Certified Public Accountant. She never worked in that capacity, however, and her credentials lapsed. When the parties' children were younger, Elisa did not work outside of the home. As the children got older, she worked part-time from her home office as a bookkeeper for some of the businesses in which the parties invested.

¶ 6 Walter and Elisa enjoyed many prosperous years. They travelled frequently, owned a residence in Bannockburn, and accumulated a large amount of very expensive jewelry and collectibles. Unfortunately, Walter's work as a broker became significantly less lucrative in the early-to-mid 2010s, to the point that he eventually stopped working in that capacity. The parties' marriage began its irretrievable breakdown in December 2014. By the time of trial, Walter was

working as the manager of a pawnshop in Chicago, and Elisa was working full-time as an executive project manager at a company called On A Roll Trucking. Walter was earning $52,000 per year, and Elisa was earning $50,000 per year.

¶ 7 One major point of contention between the parties was whether Walter had an ownership interest in the pawnshop where he worked. Walter insisted that his mother, Florence Posner, was the owner of the pawnshop and that he merely worked there. Elisa maintained that Walter was the true owner. The evidence showed that, in August 2014, Walter purchased a 35% interest in this pawnshop for $105,000. Later that year, as the parties' marriage began its irretrievable breakdown, Walter sold his interest back to the other owners.

¶ 8 Walter subsequently negotiated for an entity called MKAWBP, LLC[1] to purchase the same pawnshop in a transaction that closed on June 5, 2015. Florence was the sole member of MKAWBP, LLC, and Walter was designated in the operating agreement as the manager of that entity. Florence wrote two checks totaling $310,000 for the purchase of the pawnshop. Purportedly for convenience purposes, Walter was listed on Florence's bank account. To facilitate MKAWBP, LLC's purchase of the pawnshop, Walter (1) agreed to waive a $5000 Department of Labor claim that he had against the prior owners of the pawnshop and (2) assigned to one of the sellers of the pawnshop the right to collect $225,000 of a larger debt that Walter was owed.

¶ 9 After MKAWBP, LLC purchased the pawnshop, and continuing through trial, Walter worked as the manager of the pawnshop. He was not paid a salary for the first 18 months. During that time, Walter signed a lease agreement for the pawnshop in which he personally guaranteed

[1] "MKA" refers to Michael Keith Adler, who pulled out of the deal late in the process. "WBP" are Walter's initials.

MKAWBP, LLC's payment of rent. Other evidence likewise showed that Walter did not have what might be considered a typical employment relationship with the pawnshop. For example, the pawnshop gave Walter money to make his car payments, although he testified that this was a loan that he never repaid. When asked at trial if he ever "put any money into the pawnshop personally," Walter responded that he loaned the pawnshop $10,000. He acknowledged that there was no documentation for this loan, that he never sought reimbursement from Florence, and that Florence's total assets were greater than his. Moreover, Walter used his personal credit card to make online purchases when the pawnshop's card was overdrawn. As of the time of trial, he had not been reimbursed entirely for those expenses, and he did not know how much he was owed.

¶ 10 Florence testified that she owned the pawnshop. However, she knew very little about the details of her acquisition of the pawnshop. The evidence showed that Walter was responsible for the pawnshop's day-to-day operations and that Florence had little involvement. Florence claimed that her husband consulted with Walter daily about the pawnshop's operations.

¶ 11 In a "supplemental judgment for dissolution of marriage" (JDOM) that was entered on September 11, 2018, the trial court found that Walter engaged in "a calculated move to deprive Elisa of any interest" in the pawnshop. The court explained:

> "Florence's purchase of the Pawn Shop was perpetuated to prevent the classification of this asset as marital. Walter negotiated the purchase. Walter assumed all personal liabilities associated with the purchase. Florence assumed none. Walter is personally responsible for the payment of the Pawn Shop's rent, taxes, payment of $225,000 above the initial purchase price, and his waiver of $5,000 personal claim he had against the Pawn shop. This Court finds both Walter and Florence's testimony not credible. Walter is the owner of the Pawn Shop and Florence is 'simply the straw person.' "

The court determined that the pawnshop's fair market value was $310,000. The court ordered Walter to pay half that amount to Elisa from his portion of the proceeds of the sale of the marital residence.

¶ 12 Another contested issue at trial was whether 19 pieces of ladies' jewelry, collectively worth $369,000, were Elisa's nonmarital property. Elisa testified that Walter gave her the jewelry as gifts for special occasions over the years. Walter, on the other hand, testified that he purchased most of these items for investment purposes. The court awarded Elisa all 19 items as her nonmarital property, explaining.

> "The Court's finding that the stated items are gifts is based on the totality of the testimony of the parties, the nature and location of the purchases, and the reason of purchase. All items were purchased on or around a holiday, birthday, and for that purpose. The Court finds that Walter was not credible as it relates to his investment claim. Walter never provided any documentation for these items and never offered any item for sale or that were sold. Furthermore, the Court finds that Elisa was credible and her testimony on this subject was uncontradicted."

¶ 13 Also relevant to this appeal are the trial court's directives with respect to the marital residence, which had a stipulated value of $965,000. During the pendency of these proceedings, the parties retained a property management company and leased their home to a third party. The parties kept money in an account with the management company to pay for the expenses associated with the property. In the JDOM, the court ordered the marital residence to be sold. The court placed Elisa in charge of making any required decisions regarding the sale. The court also placed Elisa in charge of the parties' account with the management company. The court ordered Elisa to pay all expenses associated with the property from this account. If the account lacked sufficient

funds to pay expenses or pay for any necessary capital improvements, Elisa would be responsible for 40% of the costs and Walter would be responsible for 60%. Upon the sale of the property, Elisa would receive 60% of the proceeds and Walter would receive 40%.

¶ 14 Although Elisa requested maintenance in her petition for dissolution of marriage, in her closing argument, she asked the court to reserve the issue, given that Walter had purposely reduced his income during these proceedings. Walter, on the other hand, asked the court to deny maintenance. The court adopted Elisa's approach. Specifically, the court ordered that "Elisa shall have the right to file a proper petition for maintenance at any time after the entry" of the JDOM. Upon the filing of such petition, the court would "determine whether maintenance award [*sic*] is appropriate and the terms of the same after consideration of all relevant factors as set forth in 750 ILCS 5/504." This reservation of Elisa's right to petition for maintenance would terminate upon the death of either party or if Elisa remarried or cohabited with another person on a continuing and conjugal basis.

¶ 15 The court ordered Walter to contribute $120,715.70 toward Elisa's attorney fees. The court determined that, throughout the litigation, Walter "refused to answer discovery/comply with discovery requests and attempted to hide his interest" in the pawnshop. According to the court, Walter also "failed to disclose the extent of his personal property and was found not credible throughout the litigation and trial." The court blamed Walter for the highly contentious nature of the litigation and the increase in legal fees. The court further explained: "[I]t is evident that Walter has the ability to earn substantial income and has the ability to contribute to Elisa's attorney's fees. By contrast, Elisa's ability to earn income and stagnant assets are a small fraction of Walter's future earning potential and investment opportunities." Thus, the court found that "Elisa is not capable of paying her total attorney's fees and costs without undermining her financial stability

and Walter is able to contribute."

¶ 16 Walter filed a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 A. Motion to Continue the Trial

¶ 19 Walter first challenges a January 25, 2018, order denying his motion to continue the upcoming trial. According to Walter, the court did not give his newly retained attorney sufficient time to prepare for trial. Walter asks us to vacate the JDOM on this basis and to remand the matter for a new trial.

¶ 20 "We review the trial court's decision to deny a motion for a continuance for an abuse of discretion, which occurs where the ruling is 'arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.' " *In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 94 (quoting *K & K Iron Works*, 2014 IL App (1st) 133688, ¶ 22). The record, however, does not contain a transcript of the January 25, 2018, proceedings or an acceptable substitute. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Here, there is no transcript of the hearing on Walter's motion to continue trial, so "there is no basis for holding that the trial court abused [its] discretion in denying the motion." *Foutch*, 99 Ill. 2d at 392.

¶ 21 B. Maintenance

¶ 22 Walter next argues that the court erred in reserving the issue of Elisa's right to maintenance. He asserts that the court's ruling was unwarranted, because (1) Elisa received a disproportionate share of the marital property, (2) the parties' incomes were almost equal at the time of trial, and (3) the factors set forth in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2018)) did not support the court's decision. In presenting this argument, Walter challenges some of the court's factual findings. Walter attributes further error to the court's decision to reserve maintenance indefinitely, rather than limiting its order to a specific period. In this respect, Walter insists that the court's order "gives [Elisa] no incentive to be cost conscious or to refresh the skills necessary in order to obtain a higher-paying job in accordance with her education and training as a C.P.A. and her true income potential."

¶ 23 Elisa responds that the trial court properly exercised its discretion in reserving the issue of her right to maintenance. She proposes that it was appropriate to reserve the issue so that the court could "monitor the timing and circumstances of the sale" of the marital residence. Elisa further contends that the parties' incomes at the time of trial did not militate against reserving the issue of maintenance, given that, during the marriage, Walter made substantial income while she worked part-time. According to Elisa, other facts that supported the court's decision include that Walter had a limited ability to pay maintenance at the time of the JDOM and that he will be able to generate income in the future by investing. Elisa finally contends that reserving the issue of maintenance indefinitely was warranted, given that Walter "lacks credibility, fails to follow court orders, and otherwise subverts the judicial process whenever and however he can." In making that argument, Elisa refers to certain of Walter's actions that occurred after the JDOM was entered.

¶ 24 Walter challenges the trial court's factual findings as well as its ultimate decision to reserve the issue of maintenance. We will not reverse the court's factual findings unless they are against

the manifest weight of the evidence. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 21. "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." *Micheli*, 2014 IL App (2d) 121245, ¶ 21. We will not reverse the court's decision to reserve the issue of maintenance unless the court abused its discretion, which means that no reasonable person would have taken the view adopted by the trial court. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 168 (2005). As the party challenging the court's order, Walter bears the burden of showing that the court abused its discretion. *Wojcik*, 362 Ill. App. 3d at 168.

¶ 25 The trial court found that "Walter was the sole financial supporter of the family[,] which provided an enormous income in large part due to the connections of his father, which still exist." Although Walter challenges this finding, it was not against the manifest weight of the evidence. The evidence showed that Walter earned a substantial income during the marriage through his work as a broker and through investments that he coordinated with his parents and friends. This included, for example, investing with his father.

¶ 26 Walter also challenges the court's determination that Elisa had a limited earning potential due to raising the parties' children. That finding likewise was not against the manifest weight of the evidence. Although Elisa was college-educated and was once qualified as a Certified Public Accountant, she never worked in that capacity and her credentials lapsed. Elisa did not work while the children were young, and she later worked only part-time. She plainly did not have the earning potential that she would have experienced had she worked full-time in her field of study throughout the marriage.

¶ 27 The parties enjoyed a very comfortable lifestyle during their 30-plus year marriage. For example, they had an expensive home, they travelled frequently, and they spent hundreds of

thousands of dollars on jewelry and collectibles. When the JDOM was entered, however, Walter lacked the ability to pay maintenance at a level that was commensurate with the parties' standard of living during the marriage. See *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 41 (1994) ("[A] 'reserved-jurisdiction' approach to maintenance is appropriate in cases where the responsible party's present ability to pay maintenance is limited."). Under those circumstances, and considering Walter's history of generating income through investing, the trial court was justified in reserving the issue of Elisa's right to maintenance in case Walter's income increases. See *Wojcik*, 362 Ill. App. 3d at 168 (reserving the issue of the wife's right to maintenance was warranted where the husband's recent decrease in earnings was associated with a disability that the trial court found might not permanently prevent him from working); *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 396 (1990) ("Another situation in which a reserved jurisdiction approach has been applied is when the court seeks to monitor the actual circumstances of the parties.").

¶ 28 In arguing that reserving jurisdiction was inappropriate, Walter notes that Elisa received a greater portion of the marital estate. Although that is true, the circumstances justified this result. As the trial court explained when ruling on a posttrial motion, the court accounted for the parties' respective dissipation claims when apportioning the marital estate. Walter dissipated more marital assets than Elisa did ($38,000 as compared to $1847), so that alone accounted for at least part of the court's decision to deviate from a 50/50 split. Walter also asserts that the trial court "grossly overestimated" his future earning capacity. However, the record supports a conclusion that Walter's investment experience and business connections may allow him to generate substantial income again in upcoming years. It was reasonable to assume that Walter's earning potential exceeded Elisa's, as she did not work full-time until she was in her fifties. Under these circumstances, the fact that the court distributed the marital estate unequally does not mean that

the court abused its discretion in reserving the issue of Elisa's right to maintenance. See *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121 ("An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result.").

¶ 29 Whether the court should have reserved the issue *indefinitely* is a different question. Walter relies on *Scafuri*. In that case, we held that it was an abuse of discretion to reserve the issue of the wife's right to maintenance for five years where (1) the husband had the present ability to pay maintenance and (2) reserving maintenance would protract the litigation and disincentivize the wife from being cost-conscious or becoming gainfully employed. *Scafuri*, 203 Ill. App. 3d at 397. *Scafuri* is distinguishable because Walter does not have the present ability to pay maintenance and Elisa has already demonstrated her willingness to advance her career. *Scafuri* also does not address the question of whether a party's right to maintenance may be reserved indefinitely.

¶ 30 Walter also relies on *Marriott*. In that case, the trial court reserved the issue of the wife's right to maintenance for six years because the husband presently lacked the ability to pay maintenance and the wife's ability to work full-time was in doubt due to her poor health. *Marriott*, 264 Ill. App. 3d at 30. On appeal, the husband argued that "the trial court's six-year reservation of the issue of maintenance was excessively long." *Marriott*, 264 Ill. App. 3d at 41. Taking instruction from *Scafuri*, we reduced the period of reserved jurisdiction from six years to three years:

> "Here, we are met with a similar situation [as in *Scafuri*]. The six-year reservation of maintenance is too long and we find it represents an abuse of discretion. However, too brief a period of reserved jurisdiction would encourage [the husband] to defer efforts to

> become gainfully employed or otherwise improve his financial condition. The six-year period of reserved jurisdiction is lengthy; therefore, we hereby reduce it to three years.
>
> [The husband] also argues that with only a high school education, and in view of his past employment history, his employment prospects are 'thin' and it is unlikely that his ability to pay maintenance will improve. A three-year period will better establish this issue." *Marriott*, 264 Ill. App. 3d at 41.

Marriott, like *Scafuri*, does not directly address the question of whether a party's right to maintenance may be reserved indefinitely.

¶ 31 *Wojcik*, however, does address that question. Curiously, Elisa, not Walter, cites *Wojcik*, even though it supports Walter's position. The wife in *Wojcik* worked full-time at Elmhurst College. *Wojcik*, 362 Ill. App. 3d at 148. The husband ran a successful business until he developed posttraumatic stress disorder. *Wojcik*, 362 Ill. App. 3d at 147. Although the husband's business ceased operations, there was evidence suggesting that it was possible that he could eventually work again in a self-employed capacity. *Wojcik*, 362 Ill. App. 3d at 147, 150. The trial court reserved the issue of the wife's right to maintenance indefinitely—*i.e.*, until the parties' deaths, retirements, or in the event of the wife's remarriage or cohabitation with another. *Wojcik*, 362 Ill. App. 3d at 168. In so ordering, the court reasoned that the husband was presently unable to pay maintenance but that there was a possibility that his condition would subside and allow him to return to employment. *Wojcik*, 362 Ill. App. 3d at 151.

¶ 32 On appeal, the husband challenged that ruling. *Wojcik*, 362 Ill. App. 3d at 167-68. We held that the trial court did not abuse its discretion by reserving jurisdiction on the wife's request for maintenance. *Wojcik*, 362 Ill. App. 3d at 168. However, we held that "the manner in which

the trial court reserved the matter was impermissibly open-ended and vague." *Wojcik*, 362 Ill. App. 3d at 170. After examining *Scafuri* and *Marriott*, we explained as follows:

> "Here, the trial court placed no specific time period upon its reserved jurisdiction. Instead, the trial court ordered [the husband] to make annual reports to [the wife] about the status of his disability. This process was to continue until the parties' deaths or retirement, or upon [the wife's] remarriage or cohabitation. We believe that such a process is excessively protracted and vague and will almost certainly result in contention between the parties and future protracted litigation. We also believe that such a reservation will result in the difficulties previously noted by this court in *Scafuri* and *Marriott*. We thus vacate the trial court's order reserving jurisdiction over the issue of maintenance and remand the case with instructions that the trial court set a specific date to hold a hearing to rule upon the issue of [the wife's] request for maintenance. [Citation.] In setting a hearing date, the trial court shall select a reasonable time period based upon the principles above." *Wojcik*, 362 Ill. App. 3d at 170-71.

¶ 33 Although not cited in *Wojcik* or by either of the parties here, an earlier decision of this court also disapproved of reserving the issue of maintenance indefinitely. In *In re Marriage of Bothe*, 309 Ill. App. 3d 352, 357 (1999), we held that the trial court properly reserved the issue of maintenance but erred in doing so indefinitely. We explained:

> "In the numerous cases we have reviewed where trial courts have reserved jurisdiction on the issue of maintenance, there was either a specific triggering event or, more commonly, a specific time period within which to review the issue of maintenance. [Citation.] We believe that the trial court's failure to set a reasonable and certain time for review of the maintenance issue amounts to an abuse of discretion." *Bothe*, 309 Ill. App. 3d at 357.

Similar to the mandate in *Wojcik*, we

> "reverse[d] that part of the trial court's order reserving the issue of maintenance indefinitely and remand[ed] the cause with directions to rule that the issue of maintenance shall be reserved until a reasonable and certain date or shall be reviewable upon the petition of either party or upon the happening of a specific event." *Bothe*, 309 Ill. App. 3d at 357-58.

¶ 34 Pursuant to *Wojcik* and *Bothe*, we are compelled to conclude that the trial court abused its discretion in reserving the issue of Elisa's right to maintenance indefinitely. Although we are aware of no specific cap for the period of reserving the issue of maintenance (other than that the issue may not be reserved indefinitely), it should be reserved only for a period of time that is justified by the specific circumstances presented. See *Wojcik*, 362 Ill. App. 3d at 170 (cautioning against reserving the issue of maintenance for a period that is either excessively long or short). As *Wojcik* and *Bothe* teach, the trial court is in the best position to determine what is reasonable under the circumstances. We thus reverse the portion of the JDOM reserving the issue of maintenance indefinitely. We remand the matter with directions for the trial court to set a specific deadline for Elisa to petition for maintenance. In setting such deadline, the trial court shall select a reasonable timeframe that is justified by the circumstances.

¶ 35 In defending the trial court's decision to reserve maintenance indefinitely, Elisa points to events that occurred after the JDOM was entered. We note that, if Walter fails to comply with his obligations under the JDOM, Elisa may seek court intervention via appropriate enforcement mechanisms.

¶ 36 C. Classification of Jewelry

¶ 37 Walter next argues that the court erred in classifying $369,000 in ladies' jewelry as Elisa's nonmarital property. Walter contends that: (1) the court should have examined each item

individually rather than as a group; (2) Elisa's testimony did not constitute clear and convincing evidence, especially with respect to two watches and a necklace that she failed to address in her testimony; and (3) the court improperly shifted the burden to him when it noted in the JDOM that he never produced documentation regarding the jewelry and that he never sold any jewelry. Walter further maintains that the court failed to classify and dispose of two pieces of jewelry.

¶ 38 Elisa responds that the trial court's decision should be upheld, given that she presented clear and convincing testimony that the items of jewelry were gifts and that Walter's testimony to the contrary was not credible. Elisa disagrees that the trial court improperly shifted the burden of proof to Walter. In her view, the court merely commented on the implausibility of Walter's testimony. Elisa also asserts that Walter has changed his position on appeal, insofar as he argued at trial that Elisa should be awarded her jewelry.

¶ 39 There is a rebuttable presumption that all property that the parties acquired during their marriage is marital. *In re Marriage of Asta*, 2016 IL App (2d) 150160, ¶ 16. To overcome that presumption, Elisa had to produce clear and convincing evidence that the jewelry was acquired in accordance with one of the exceptions listed in section 503(a) of the Act (750 ILCS 5/503(a) (West 2018)). *Asta*, 2016 IL App (2d) 150160, ¶ 16. Elisa relies on section 503(a)(1), which applies to "property acquired by gift, legacy or descent or property acquired in exchange for such property." 750 ILCS 503(a)(1) (West 2018). Where, as here, the court's classification of assets depends on weighing the witnesses' credibility, we will reverse the court's judgment only if it is against the manifest weight of the evidence. *Asta*, 2016 IL App (2d) 150160, ¶ 17.

¶ 40 We begin with Walter's argument that the trial court failed to classify and dispose of two pieces of jewelry: a "gold necklace with a one-carat diamond set in a gold bezel" and a "five-carat, emerald cut, E color VVS2 diamond ring." Elisa does not respond to this argument. As we shall

explain, we cannot confidently say that the trial court failed to account for any items of jewelry. At any rate, Walter's argument is barred by the invited-error doctrine.

¶ 41 During their testimony, the parties sometimes referred to a list of jewelry that Elisa had prepared. That list, which was designated as petitioner's exhibit 92, was not entered into evidence and is not part of the record on appeal. The parties, however, entered into evidence respondent's exhibit 23A, which was a list of 19 items of ladies' jewelry. Thirteen of those items had stipulated values totaling $361,900. Neither a "gold necklace with a one-carat diamond set in a gold bezel" nor a "five-carat, emerald cut, E color VVS2 diamond ring" were listed on respondent's exhibit 23A.

¶ 42 During their testimony, the parties did not always refer to the jewelry with the precise descriptions that they used in respondent's exhibit 23A. Thus, when reviewing the trial transcripts, it is sometimes difficult to understand whether the parties were referring to jewelry that was included on the list. Nevertheless, it appears from Walter's testimony that the five-carat diamond that he mentions in his appellate brief may have ultimately become part of the "handmade three-stone style diamond engagement ring" that the court awarded to Elisa as her nonmarital property.

¶ 43 In her closing argument, Elisa requested, as her nonmarital property, all 19 items of jewelry that were reflected on respondent's exhibit 23A. She asserted that the stipulated value of those items was $369,000, even though respondent's exhibit 23A reflected the stipulated values for only 13 of the items. In his closing argument, Walter conceded that two items of jewelry had been gifted to Elisa, but he maintained that all other items were acquired for investment purposes.[2] Walter attached to his closing argument a spreadsheet reflecting a proposed property division

[2] In his brief on appeal, Walter concedes that two additional items were gifts to Elisa.

report. It seems that there are 19 items of ladies' jewelry in that report, although some of those items have different names than are reflected in respondent's exhibit 23A. In his closing argument, rather than treating the jewelry individually, Walter proposed awarding all of it to Elisa as part of the overall distribution of property. Significantly, neither party mentioned in their closing arguments or in their proposed judgments either a "gold necklace with a one-carat diamond set in a gold bezel" or a "five-carat, emerald cut, E color VVS2 diamond ring." This is so even though Walter represented that his spreadsheet reflected "[a] full listing" of the parties' personal property.

¶ 44 In the JDOM, the court awarded to Elisa, as her nonmarital property, all 19 items of jewelry that were identified on respondent's exhibit 23A. Consistent with what Elisa asserted in her closing argument, the court determined that these 19 items had a stipulated value of $369,000.

¶ 45 Under these circumstances, contrary to what Walter argues, we cannot confidently say that the trial court failed to account for any items of jewelry. It is entirely possible that the two items that Walter mentions in his brief were addressed in the JDOM, albeit with a different name or designation. Moreover, Walter's argument that the trial court failed to classify and dispose of items is barred under the invited-error doctrine. As noted above, Walter did not mention these two items in his closing arguments or in his proposed judgment, even though he represented that his attached spreadsheet reflected "[a] full listing" of the parties' personal property. Pursuant to the invited error-doctrine, "[a] party cannot complain of error which he induced the court to make or to which he consented." *McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000). The rationale for this rule is that "[i]t would be manifestly unfair to allow one party a second trial upon the basis of error which he injected into the proceedings." *McMath*, 191 Ill. 2d at 255 (quoting (*Auton v. Logan Landfill, Inc.*, 105 Ill. 2d 537, 543 (1984)). The invited-error doctrine similarly prohibits Walter

from criticizing the trial court for addressing the jewelry as a group rather than individually, given that Walter did so himself in his closing argument.

¶ 46 The only remaining question is whether the trial court properly determined that the jewelry that was listed in respondent's exhibit 23A was Elisa's nonmarital property. We hold that the court's finding was not against the manifest weight of the evidence. This was a classic contest of witness credibility. Elisa testified that the jewelry was purchased as gifts for her on special occasions, whereas Walter testified that he purchased the jewelry for investment purposes. The court deemed Elisa to be the more credible witness. Much of Walter's argument is simply a plea for us to reweigh the evidence, but that is not our role. See *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642 (1993) ("The determination of all issues regarding the credibility of the parties and their witnesses or the weight to give the evidence lies with the trier of fact."). Although Walter asserts that Elisa was not credible to the extent that she claimed that she received jewelry as a gift for her 30th wedding anniversary (which would have been after the parties separated), Elisa did not mention her 30th wedding anniversary on the pages of the transcript that Walter cites. Even if there were any discrepancies in the testimony, it was within the province of the trial court to resolve them. *In re Marriage of Schmidt*, 292 Ill. App. 3d 229, 242 (1997). The trial court reasonably concluded that Elisa met her burden to prove by clear and convincing evidence that she received the 19 pieces of jewelry as gifts.

¶ 47 Walter's complaint that Elisa did not specify each piece of jewelry in her testimony is somewhat disingenuous. Walter objected when Elisa's counsel attempted to refresh Elisa's memory with a list of her jewelry. In addressing the objection, the court responded that it did not need Elisa to go through her list. Elisa then did her best on the stand to recall as many items of jewelry as she could and to describe the circumstances of the purchases. At one point, she said

that she was "drawing a blank" and would "really need to see my list." It is not surprising that Elisa would have trouble recalling 19 pieces of her jewelry off the top of her head. At any rate, Elisa testified that the parties never purchased any jewelry for her for investment purposes and that she never heard Walter mention otherwise until the divorce proceedings were underway. The trial court was entitled to credit Elisa's testimony.

¶ 48 Finally, contrary to what Walter argues, the court did not shift any burden to him. It was appropriate for the court to mention in the JDOM that Walter never provided any documentation for the jewelry and that he never tried to sell any jewelry. The court was merely commenting on the implausibility of the investment theory that Walter introduced into the case through his testimony.

¶ 49 For these reasons, there is no basis to disturb the trial court's judgment with respect to the jewelry.

¶ 50 D. Classification of the Pawnshop

¶ 51 Walter next argues that the trial court erroneously classified the pawnshop as marital property and awarded Elisa a portion of its value. According to Walter, the evidence showed that the pawnshop was Florence's property and that he had no interest in it.

¶ 52 Walter emphasizes that Florence was the sole member of MKAWBP, LLC, that she made the sole capital contribution to that company, and that she was allocated 100% of the company's profits and losses. Walter also notes that Florence wrote two checks totaling $310,000 for the purchase of the pawnshop. Although Walter acknowledges that he was also named on Florence's bank account, he directs our attention to Florence's testimony that this was solely for convenience purposes. Walter further relies on Florence's testimony that she purchased the pawnshop so that her husband had something to do in his retirement. Specifically, according to Florence, although

her husband is not physically capable of working at the pawnshop, he communicates with Walter daily regarding purchases and sales.

¶ 53 Walter acknowledges that he negotiated Florence's purchase of the pawnshop. However, he maintains that there was no evidence supporting the trial court's conclusion that he assumed all personal liabilities associated with that purchase. Without further explanation, Walter asserts that his guarantee of the pawnshop's payment of rent does not justify a conclusion that the pawnshop was marital property. Walter also argues that the court erroneously concluded that he was personally responsible for paying the pawnshop's taxes. In that respect, Walter suggests that the court may have been confused by the fact that Walter was designated as the "Tax Matters Partner" in MKAWBP, LLC's operating agreement.

¶ 54 Walter acknowledges that, to facilitate the purchase of the pawnshop, he agreed to forgo collection of $225,000 of a larger debt. He proposes, however, that he was "not giving up anything of value," given that his trial testimony raised an inference that this debt was uncollectible. Walter concedes that he waived a $5000 Department of Labor claim to facilitate the purchase of the pawnshop. In his view, however, the $5000 that he contributed was "trivial" compared to the $310,000 that his mother paid for the pawnshop, on top of her subsequent capital contributions.

¶ 55 In defending the trial court's classification of the pawnshop as marital property, Elisa notes that Walter purportedly pulled out of his own investment in the pawnshop after discovering that the owners were crooks. Nevertheless, he allegedly then arranged for his mother to purchase the same pawnshop a few months later. Elisa observes that the entity that purchased the pawnshop—MKAWBP, LLC—bears Walter's initials, not Florence's.

¶ 56 Elisa further mentions that, a few months before MKAWBP, LLC purchased the pawnshop, Elisa and Walter agreed to dismiss a lawsuit in connection with one of their

investments. One of the contingencies of their agreement was for Walter to execute documents "concerning Walter Posner's purchase" of the pawnshop.

¶ 57 Elisa also deems it significant that, to facilitate the purchase of the pawnshop, Walter assigned to one of the sellers $225,000 of a debt that Walter was owned. In Elisa's view, this demonstrates that Walter agreed to pay $225,000 of the purchase price of the pawnshop. Responding to Walter's claim that this $225,000 represented uncollectible debt, Elisa emphasizes that Walter cites only his own testimony, which the trial court found not to be credible.

¶ 58 Elisa next mentions that Walter guaranteed the pawnshop's payment of its rent, which is another indication that he owned the pawnshop. According to Elisa, Walter's testimony that he did not read this document before signing it was not credible.

¶ 59 Furthermore, Elisa reiterates that, by his own admission, Walter contributed $5000 toward the purchase of the pawnshop by waiving his right to a claim in that amount. Responding to Walter's characterization of that $5000 as "trivial," Elisa asserts that "[i]t is unusual to say the least that a non-owner would assume even a 'trivial' responsibility for closing costs for the purchase of an asset he was not buying."

¶ 60 Elisa also recounts evidence that Walter worked for the pawnshop for 18 months without drawing a salary, that he lent the pawnshop $10,000 without a written agreement and without asking to be repaid, and that he used his personal credit card to make purchases for the pawnshop when the business was overdrawn. Elisa insists that this behavior is inconsistent with Walter's claim that he was merely an employee of the pawnshop.

¶ 61 Moreover, Elisa asserts that "Walter and his mother Florence have a history of hiding Walter's interests in mutually owned property." In support of this contention, Elisa points to a nominee agreement associated with an unrelated investment in an entity known as Intrinsic

EdgeMicro L.P. In that agreement, Walter and Florence agreed that their investment would be held in Florence's name only, even though Walter owned half of it.

¶ 62 Finally, Elisa mentions that Florence admitted at trial that she was not at the closing for the pawnshop. Florence also did not know who the seller was, she had never seen certain documents associated with the purchase of the pawnshop, and she was not involved in the business.

¶ 63 We hold that the trial court's finding that the pawnshop is marital property was not against the manifest weight of the evidence. The court did not deem Walter and Florence to be credible witnesses, and we will not disturb that determination. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 649 (2009) (the appellate court had no basis to overturn the trial court's determination, which was based on its assessment of the credibility of the witnesses, that the husband engaged in " 'sham transactions' " that were designed to " 'defraud' " the wife from her share of the marital estate). For all the reasons articulated in Elisa's brief and set forth above, there was ample reason for the trial court to doubt Walter's claim that he was merely an employee of the pawnshop. It would be highly unusual, for example, for an employee to guarantee the payment of his employer's rent or to forego the collection of personal debts to facilitate his employer's purchase of a business. Nor do employees typically work for a year and a half without getting paid or make $10,000 loans to their employer without documentation and without defined terms for repayment. The evidence supported an inference that Walter pulled out of his own investment in the pawnshop as his marriage was breaking down and then used his mother as a conduit to purchase the pawnshop. The trial court's findings to that effect were supported by the evidence.

¶ 64 E. The Marital Residence

¶ 65 Walter next argues that the court erred in awarding Elisa 60% of the proceeds from the sale of the marital residence while requiring Walter to pay 60% of the expenses associated with the

residence pending a sale. He argues that this arrangement is "grossly inequitable" because (1) Elisa "received the lion's share of the parties' assets," (2) he is responsible for all debts in his own name, (3) he was ordered to contribute to Elisa's attorney fees, and (4) the court reserved the issue of Elisa's right to maintenance indefinitely. Walter also notes that he made substantial financial contributions to the acquisition and preservation of the marital estate. He asserts that Elisa, on the other hand, worked only part-time during the marriage and that the record lacks evidence that she contributed as a homemaker. Additionally, Walter mentions that he and Elisa are similar in age and health, they are both college graduates, and their incomes were almost equal at the time of trial. Finally, he argues that Elisa is in a better position than he is to obtain a higher-paying job, given that "technology made him obsolete" as a broker.

¶ 66 Elisa acknowledges that she received more than 50% of the marital property, but she disagrees that she received the "lion's share." She notes that she was required to pay the debts in her own name and that the court found that the circumstances warranted requiring Walter to contribute to her attorney fees. Moreover, Elisa contends that it is irrelevant that the court reserved the issue of her right to maintenance, as it is unknown whether she will petition for maintenance. Although she acknowledges that there was no direct evidence that she was a homemaker, she emphasizes that she contributed to the acquisition and preservation of marital property through her employment. Elisa also notes that, in apportioning the proceeds and expenses associated with the marital residence, the court considered, as one of many factors, Walter's dissipation of assets. Finally, in light of Walter's history as an investor, Elisa argues that the parties' present incomes are not reflective of their respective earning potentials.

¶ 67 Section 503(d) of the Act directs the trial court to consider the following factors when dividing marital property:

"(1) each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any decrease attributable to an advance from the parties' marital estate under subsection (c-1)(2) of Section 501; (ii) the contribution of a spouse as a homemaker or to the family unit; and (iii) whether the contribution is after the commencement of a proceeding for dissolution of marriage or declaration of invalidity of marriage;

(2) the dissipation by each party of the marital property ***;

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

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

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

(7) any prenuptial or postnuptial agreement of the parties;

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

(9) the custodial provisions for any children;

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

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

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2018).

"The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts." *Romano*, 2012 IL App (2d) 091339, ¶ 121. "An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result." *Romano*, 2012 IL App (2d) 091339, ¶ 121. We review the trial court's factual findings under the manifest-weight-of-the evidence standard, but we review the court's final property disposition for an abuse of discretion. *Romano*, 2012 IL App (2d) 091339, ¶ 121.

¶ 68 We hold that the trial court did not abuse its discretion with respect to its allocation of the proceeds and expenses associated with the sale of the marital residence. As previously mentioned, the court accounted for the parties' respective dissipation claims when apportioning the marital estate. Walter dissipated more marital assets than Elisa did ($38,000 as compared to $1847), so that alone accounted for at least part of the court's decision to deviate from a 50/50 split. The parties' respective financial prospects further justified awarding Elisa a larger portion of the marital estate. Walter has substantial experience investing in complex business ventures with family members and friends. Elisa, on the other hand, spent most of the marriage either not working or working only part-time. Walter's career as a broker may be over, but the record supports a conclusion that, by virtue of his business experience and his connections, he is in a better position than Elisa to improve his financial situation in upcoming years. Under these circumstances, the 60/40 allocation of the expenses and proceeds associated with selling the marital residence was not an abuse of discretion.

¶ 69 Although Walter mentions that the trial court ordered him to contribute a very substantial amount toward Elisa's attorney fees, as we will explain in the next section, Walter brought that result upon himself by his own actions in this litigation. Moreover, Walter's concerns associated

with the indefinite reservation of Elisa's right to maintenance are moot, given that we are remanding the matter to give the trial court the opportunity to set a more reasonable temporal restriction.

¶ 70 F. Attorney Fees

¶ 71 As his last argument, Walter contends that the court erred in requiring him to contribute $120,715.70 toward Elisa's attorney fees. In support of his position, Walter reiterates many of the points that he argued in connection with his argument relating to the treatment of the marital residence. Elisa likewise reiterates many of her arguments relating to that issue. She adds that Walter does not address the trial court's findings that he failed to comply with discovery requests and that he failed to disclose the extent of his personal property.

¶ 72 Generally, a party who incurs attorney fees is responsible for paying them. *Micheli*, 2014 IL App (2d) 121245, ¶ 45. As explained below, the Act allows parties to petition for attorney fees in certain circumstances. We review an award of attorney fees for an abuse of discretion. *Micheli*, 2014 IL App (2d) 121245, ¶ 44.

¶ 73 Section 508(a) of the Act provides, in relevant portion: "At the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection." 750 ILCS 5/508(a) (West 2018). Section 503(j)(2) of the Act, in turn, authorizes the trial court, after considering the criteria for dividing property specified in section 503(d), to require one party to contribute to the other's attorney fees.[3] 750

[3] The court must consider additional factors if maintenance has been awarded. 750 ILCS 5/503(j)(2) (West 2018). Maintenance was not awarded here, so those factors are not at issue.

ILCS 5/503(j)(2) (West 2018). We identified those factors in the preceding section of our order and need not repeat them here. When a party seeks contribution pursuant to sections 508(a) and 503(j)(2), "[t]he party seeking contribution must establish his or her inability to pay and the other spouse's ability to do so." *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 60. "Inability to pay exists where the payment of attorney fees would strip the party of his or her means of support or would undermine his or her financial stability." *Lonvick*, 2013 IL App (2d) 120865, ¶ 60. When allocating attorney fees, the trial court may also consider whether one party unnecessarily increased the cost of litigation. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 117.

¶ 74 Section 508(b) of the Act, however, more specifically addresses situations where one party is at fault for generating attorney fees:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2018).

¶ 75 Elisa petitioned for attorney fees pursuant to both section 503(j) and section 508(b). In the JDOM, it seems that the court awarded fees under sections 508(a) and 503(j). It is not entirely clear whether the court found that any fees were also appropriate pursuant to section 508(b). On appeal, neither party addresses section 508(b), so we likewise will focus on sections 508(a) and 503(j).

¶ 76 We hold that the trial court did not abuse its discretion in ordering Walter to contribute toward Elisa's attorney fees. The court found that, throughout the litigation, Walter "refused to answer discovery/comply with discovery requests and attempted to hide his interest in the Pawn Shop." The court added that Walter "failed to disclose the extent of his personal property and was found not credible throughout the litigation and trial." Moreover, the court blamed Walter for "the highly contentious nature of litigation in this case and the increase in legal fees." Elsewhere in the JDOM, the court commented that Walter's unreasonable positions "resulted in unnecessary discovery, preparation, and an extended trial." Although Walter does not specifically challenge these findings, the record substantiates the court's assessment of the case. We fail to see good reason for the parties to have spent hundreds of thousands of dollars each litigating this matter. The record substantiates the trial court's conclusion that Walter was largely to blame for inflating the parties' attorney fees by, among other things, attempting to hide his ownership interest in the pawnshop.

¶ 77 The trial court further explained:

> "[I]t is evident that Walter has the ability to earn substantial income and has the ability to contribute to Elisa's attorney's fees. By contrast, Elisa's ability to earn income and stagnant assets are a small fraction of Walter's future earning potential and investment

opportunities. Thus, the Court finds that Elisa is not capable of paying her total attorney's fees and costs without undermining her financial stability and Walter is able to contribute."

For the reasons explained in the preceding section of this order, these findings were supported by the evidence. Thus, the trial court did not abuse its discretion in ordering Walter to contribute $120,715.70 toward Elisa's attorney fees.

¶ 78 III. CONCLUSION

¶ 79 For the forgoing reasons, we affirm in part, reverse in part, and remand the matter with directions.

¶ 80 Affirmed in part and reversed in part.

¶ 81 Cause remanded with directions.