2018 IL App (2d) 170656-U
No. 2-17-0656
Order filed August 1, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF VICKI L. PRESTON,	)	Appeal from the Circuit Court
	)	of Boone County.
Petitioner-Appellee and	)	
Cross-Appellant,	)	
	)	
and	)	No. 13-D-79
	)	
PHILIP E. PRESTON,	)	
	)	Honorable
Respondent-Appellant and	)	John H. Young,
Cross-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's classification of business entity as marital property was not against the manifest weight of the evidence since business, established during the marriage, was presumed to be marital and respondent failed to rebut this presumption by clear and convincing evidence; (2) the trial court's final property division did not constitute an abuse of discretion as the record establishes that the court considered the statutory factors, including respondent's contributions to the increase in value of the parties' marital assets, the value of the property assigned to each spouse, the maintenance award, and the tax consequences; (3) the trial court's valuation of business entity was not against the manifest weight of the evidence where the decision rested on the resolution of conflicts in the expert valuation testimony; (4) the trial court did not fail to apply existing law in setting maintenance award; and (5) the trial court's decision not to award petitioner a disproportionate share of the marital estate did not constitute error.

¶ 2 Petitioner, Vicki L. Preston, and respondent, Philip E. Preston, each appeal aspects of the judgment of the circuit court of Boone County dissolving their marriage. Respondent raises two principal issues on appeal. First, he challenges the trial court's classification of a business known as Littlestar Plastics, Inc. (Littlestar) as marital property. Second, he disputes the trial court's division of the parties' marital assets. In her cross-appeal, petitioner also challenges the trial court's division of the parties' marital assets. In addition, petitioner asserts that the trial court erred in its valuation of Littlestar and failed to apply existing law in establishing respondent's maintenance obligation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent were married in September 1990. No children were born of the marriage. On June 4, 2013, petitioner filed a petition for dissolution of marriage. At the time the petition for dissolution was filed, petitioner was 58 years old and respondent was 57 years old. Prior to trial, the court entered a temporary agreed order prohibiting the parties from "withdrawing, transferring, or otherwise disposing of any cash, stocks, bonds, securities, or monies deposited in any bank account in which either party [or any business entity in which either has any interest (whether by title or by reason of the marital relationship of the parties)] currently has any interest, except in the normal course of business."

¶ 5 Thereafter, the court entered several pre-dissolution orders pertaining to the division of property. Pursuant to an agreed order filed on November 20, 2013, each party was awarded "$350,000 from bank accounts in their respective sole or joint names." Also pursuant to the November 20, 2013, agreed order, respondent was awarded $20,000 from his checking account and $100,000 from Littlestar's "Due to Shareholder" account. In addition, petitioner was awarded $20,000 from her checking account, $6000 from Littlestar for interim expert litigation

costs, and $100,000 from her bank account. Pursuant to an agreed order filed June 11, 2014, respondent paid petitioner $75,000 for her interest in the parties' 1933 Ford, 1967 Cessna airplane, and a motorhome. Pursuant to an agreed order filed August 22, 2014, respondent paid petitioner $182,500 for her interest in the parties' home in Poplar Grove. Pursuant to an agreed order entered on February 25, 2015, respondent paid petitioner $134,000 for her interest in an entity known as Preston Holdings, LLC. Although not pursuant to a court order, petitioner also received $44,904 as her half of the proceeds from the sale of the parties' lot in Michigan and $83,000 as her half of the proceeds from the sale of the parties' farm. Thereafter, the matter proceeded to trial over various dates in December 2016. The following evidence is taken from the transcript of the trial and the common law record.

¶ 6 Respondent received a bachelor's degree in mechanical engineering from Southern Illinois University in 1981. Thereafter, he worked as a design engineer for TRW and Rapid Air and then as an applications engineer for Rockford Products. At the time of the marriage, respondent was a sales person at Pro Technical Products. Respondent's salary at Pro Technical Products was commission based and ranged from $38,000 to $45,000 per year. Petitioner is a high school graduate. At the time of the marriage, petitioner was working at Sundstrand, earning $26,000 per year.

¶ 7 In April 1991, the parties purchased a home in Machesney Park (Machesney Park home) for their marital residence. The deed for the Machesney Park home lists respondent and petitioner as joint tenants. However, petitioner's name was not on the mortgage because she had previously filed for bankruptcy. Shortly after the parties purchased the Machesney Park home, respondent decided that he wanted to go into business for himself.

¶ 8 In June 1991, respondent founded Littlestar. On July 1, 1991, respondent entered into a

lease for space in Rockford. The lease lists the lessor as "Phillip [*sic*] Preston *** d/b/a Littlestar Mfg." On July 15, 1991, respondent filed an "Assumed Name Certificate of Intention," certifying that he intended to conduct and transact a machining services business in Winnebago County under the Littlestar name. On August 12, 1991, respondent filed in Winnebago County a "Certificate of Ownership of Business" indicating that he was the sole owner of Littlestar. At about the same time, respondent entered into a business relationship with Darrel Ols.

¶ 9 Ols owned and operated a company called DSO Plastics (DSO). Ols and respondent agreed that respondent would secure sales orders under the Littlestar name and the orders would be filled using DSO's machinery. Respondent testified that the reason for this arrangement was because Ols was experiencing issues with the Internal Revenue Service (IRS). As a result, the new sales could not be fulfilled in DSO's name for fear of the IRS seizing the sales proceeds. In addition, respondent wanted to control the sales proceeds to ensure that he received his share of the money. These proceeds were important to respondent because he was in the process of designing a piece of equipment specifically for use by Littlestar and he needed the income to finance his design work on the project. The schedule C from respondent's 1991 federal income tax return listed Littlestar's gross sales for that year as $49,980, its gross income as $23,634, and its net profit as $7179.

¶ 10 Late in 1991, Ols's financial situation deteriorated and he agreed to sell DSO's equipment, accounts payable, and accounts receivable to respondent for $32,500. To this end, on December 31, 1991, respondent obtained a loan from Alpine Bank in the amount of $45,000. The borrower on the loan was "Phillip [*sic*] E. Preston d/b/a Littlestar Mfg. Co." The promissory note listed as collateral various assets, including inventory, equipment, accounts and other rights to payment, and general intangibles. The promissory note also provided that there was an

" 'Exhibit A' attached" listing additional collateral. However, the record does not contain this document. On September 1, 1992, respondent obtained a second loan from Alpine Bank in the amount of $52,040.

¶ 11 In May 1993, respondent incorporated Littlestar. In July 1993, Littlestar applied for a $315,000 loan from the United States Small Business Administration (SBA). In the loan application materials, respondent provided a history of the company, representing that Littlestar was established in June 1991. In relation to the SBA loan, respondent testified that he signed a promissory note on behalf of Littlestar as well as a personal guaranty. Petitioner also recalled signing the promissory note for the SBA loan. Respondent testified that the collateral for the note on the SBA loan was all of Littlestar's assets, including its equipment, money, and "corporate papers." Neither the promissory note for the SBA loan nor respondent's personal guaranty was produced at trial. There were, however, two mortgage documents submitted at trial that respondent and petitioner had executed in favor of Bank One in connection with the SBA loan. Both of these mortgages were recorded against the Machesney Park home.

¶ 12 In October 1993, respondent asked petitioner to help him run the office side of Littlestar because he could not keep up with the paperwork. At first, petitioner worked in the shipping department. Over the years that followed, petitioner became responsible for Littlestar's bookkeeping and human resources. Petitioner performed tasks involving payroll, accounts payable and receivable, insurance, financial statements, and employee onboarding. Petitioner acknowledged that respondent was the "key guy" at Littlestar, but testified that she also knew Littlestar very well, including its manufacturing processes, its major customers, and its customers' key contact people. In addition, petitioner served as Littlestar's vice president and secretary from the late nineties until the commencement of the dissolution proceeding. Petitioner

acknowledged, however, that she has never owned any shares of Littlestar's stock.

¶ 13 Petitioner testified that in 1998, the parties moved from the Machesney Park home to a home in Poplar Grove. The Poplar Grove home was located in an "air park." Petitioner testified that the couple purchased a home in an air park so respondent could buy an airplane and have a place from which to fly. After the parties moved into the Poplar Grove home, respondent purchased a Grumman Tiger aircraft. Respondent subsequently acquired a Cessna plane through a trade in. After respondent acquired an airplane, the couple traveled frequently. Among the destinations to which they traveled were Key West, Lake Tahoe, Colorado, Washington, D.C., and St. Louis. Petitioner further testified that during the marriage, the couple donated money to charities and helped out relatives. She also testified that the couple always had new cars and that they purchased a lot on the Upper Peninsula of Michigan and a farm.

¶ 14 Petitioner left Littlestar's employ in 2009 to work for Earthquake Cold Milling Company (Earthquake). Petitioner assisted Kim Tedrick, her replacement at Littlestar, during the transition. At the time petitioner left Littlestar, her gross annual salary was $102,000. Following petitioner's departure from Littlestar, she continued to earn $102,000, with half of her salary paid by Earthquake and the other half paid by Littlestar. In 2013, when it was clear that Earthquake would not succeed as a business, petitioner wanted to return to Littlestar, but respondent would not allow it.

¶ 15 At the time of trial, petitioner was unemployed. Nevertheless, during the pendency of the dissolution proceedings, petitioner was receiving a "salary" of $100,000 per year from Littlestar. By court order, the amount of petitioner's "salary" increased to $125,000 per year on August 31, 2016. Petitioner stated that one reason she is not working is that she does not have any unmet needs. She also noted that she has "several hundred thousands of dollars" in her bank account

that she has not had to access to support her lifestyle.

¶ 16 Respondent testified that he is the sole shareholder of Littlestar. Respondent described Littlestar as "a design assistance and engineering services company that offer[s] machining and molding assembly." Respondent testified that his duties at Littlestar include designing products, contacting customers, preparing financial information, and selling product. Respondent testified that UTC, one of Littlestar's customers, accounts for 83 percent of its business and 90 to 95 percent of the company's profits.

¶ 17 Respondent testified that his annual salary from Littlestar is $250,000. Nevertheless, he acknowledged that his financial affidavit reflected that through November 17, 2016, his year-to-date income from Littlestar was $1.573 million. Further, in his sworn answers to interrogatories, respondent listed income ranging from $540,000 to $940,000 for the years 2009 through 2012. Submitted into evidence were the parties' joint federal tax returns for the years 2010 through 2014. These documents showed the parties reported W-2 wages and adjusted gross income (AGI) for each year as follows:

YEAR	RESPONDENT'S W-2 WAGES	PETITIONER'S W-2 WAGES	AGI
2010	$930,112	$100,011	$1,197,310
2011	$531,117	$99,217	$768,615
2012	$781,344	$73,271	$1,003,802
2013	$135,212	$73,174	$411,701
2014	$220,512	$95,834	$440,395

The filing status on respondent's 2015 tax return was married filing separately. His federal income tax return for 2015 shows W-2 wages of $1.568 million and AGI of $1.482 million.

¶ 18 Respondent testified that he did not actually receive the vast majority of income reported on his tax returns. Rather, he explained, this was simply a mechanism by which to avoid double taxation. According to respondent, the money itself never left Littlestar. Instead, it was kept in a checking account titled "Due to Stockholder." Respondent further testified that the "Due to Stockholder" account was used to pay his personal income tax liability to the IRS, but that the remainder of the funds stayed with Littlestar for future use by the company.

¶ 19 Respondent admitted that on September 29, 2015, he transferred $660,000 from the "Due to Stockholder" account to his personal checking account. The following day, he wired $646,805.47 to Genisy Title, Inc., in Florida to purchase a home in which his girlfriend resides. Respondent testified that this money was a loan from Littlestar which he had to repay, but he admitted that he did not produce a promissory note to support his testimony. He also admitted that he never disclosed to petitioner that he had taken money out of Littlestar for this purpose.

¶ 20 Both parties offered expert testimony regarding the value of Littlestar. Petitioner retained Bruce Hutler of Baker Tilly Virchow Krause, LLP (Baker Tilly). Hutler is a partner at Baker Tilly and is in charge of the firm's valuation litigation support group. Hutler has an undergraduate degree from the University of Wisconsin at Milwaukee and a graduate degree from the University of Wisconsin at Madison, both in the "financial specialization area." Hutler also has three business valuation designations—Accredited Senior Appraiser, Certified Valuation Analyst, and Chartered Financial Analyst. Hutler testified that he has worked in the business-valuation field for nearly 24 years, 19 of which have been with Baker Tilly. Over that time, Hutler has prepared "[w]ell over a thousand" business valuations.

¶ 21 Hutler testified that there are three different methods for valuing an asset: (1) the income approach; (2) the market approach; and (3) the cost approach. The income approach considers

the historical cash flow of the company adjusted for extraordinary, nonrecurring, and discretionary items. The market approach examines transactions of comparable types of companies and the multiples that were paid in those transactions. The cost approach looks at the company's balance sheet. Hutler testified that in valuing Littlestar, he relied "most heavily" on the income approach and gave "some weight" to the market approach. Hutler did not use the cost approach because it does not consider the intangible values of the company, such as the customer relationships that respondent had built over the years. Hutler prepared a report of the valuation of Littlestar as of December 31, 2015.

¶ 22 Under the income approach, Hutler examined Littlestar's income from March 31, 2011, through March 31, 2015, as adjusted for extraordinary, nonrecurring, and discretionary items. Hutler observed an upward growth trend for Littlestar's cash flow over the most recent years. As a result, he weighted the cash flow for the most recent years more heavily than earlier years. This resulted in a gross weighted average cash flow of $1,558,557. Hutler then adjusted that amount downward for anticipated capital expenditures ($550,000) and anticipated working capital ($48,000), resulting in a net weighted average cash flow of $960,557. He then divided the net weighted average cash flow by a capitalization rate of 11.8%, to arrive at an indicated value of invested capital of $8.154 million.[1] He then added to that figure $829,000 in "non-operating cash" to arrive at a final valuation under the income approach of $8.983 million.

¶ 23 Under the market approach, Hutler examined the business-enterprise value, sales, and

[1] Hutler described the capitalization rate as the rate of return an investor would demand for an investment in Littlestar relative to the risk. Hutler testified that the capitalization rate is "subjective in part" and based on past valuations of similar companies.

EBITDA for six other companies in Baker Tilly's database.[2] Hutler determined that the mean of the business-enterprise value to sales for those six companies was 0.80 and the median business enterprise value to EBITDA was 3.95. Hutler then applied these multiples to Littlestar's sales and EBITDA for three measures—the last fiscal year, the last 12 months, and a weighted average from 2011 through 2015. This resulted in a business-enterprise value for each distinct measure. Using his "experience and some subjectivity," Hutler then applied different weighting to each of the resulting business-enterprise values to arrive at a weighted equity value for each measure. Hutler added the weighted equity values to arrive at an operating equity value of $8.368 million. To that amount, Hutler added $829,000 in "non-operating cash" to arrive at a final valuation under the market approach of $9.197 million.

¶ 24 Hutler then weighted the income approach (75%) and the market approach (25%), to arrive at a gross valuation for Littlestar of $9.036 million. Hutler explained that he weighted the income approach more because that approach represented "a reflection of truly what's [*sic*] that cash flow of the company and what an investor would look to as far as the cash flow that could come out of the company to pay back both [his or her] return on investment." He placed less weight on the market approach because the guideline transactions were not entirely similar to Littlestar.

¶ 25 Hutler then looked at goodwill, which he defined as "the intangible value of the company." He noted that goodwill has two components—enterprise goodwill and personal goodwill. Hutler described "enterprise" goodwill as "customer relationships" and "everything that's been built up over the years." He described "personal" goodwill as "the personal

[2] EBITDA stands for earnings before interest, taxes, depreciation, and amortization. Hutler testified that EBITDA is a form of cash flow.

contributions of [respondent] in helping build the company." He explained that the concept of personal goodwill is "trying to allocate the portion of that goodwill or that intangible value of the company to the efforts of [respondent] such that if he were no longer with the company, what would be the reduction of value for not having his services included in the company." Hutler noted that he routinely separates personal and enterprise goodwill in a variety of contexts. In valuing respondent's personal goodwill, Hutler used the "with-and-without method." Under this method, Hutler compared Littlestar's projected cash flow over the five upcoming years under two circumstances—if respondent had left the company with a non-compete agreement and if he had left the company without a non-compete agreement. Using the "with-and-without method," Hutler valued respondent's personal goodwill at $1.089 million. After subtracting personal goodwill, Hutler assigned a final valuation to Littlestar of $7.95 million ($9.036 million minus $1.089 million).

¶ 26 Neal Richardson, a partner at Wipfli, LLP, testified on respondent's behalf. Richardson performs valuation and tax work for Wipfli. Richardson has an accounting degree from Buena Vista College. Richardson has done about 150 business valuations over a course of 25 years. Richardson prepared a business valuation for Littlestar as of December 31, 2015, and detailed his findings in a written report.

¶ 27 Like Hutler, Richardson testified that there are three primary approaches for valuing a company—the asset or cost approach, the market approach, and the income approach. Richardson opined that the cost approach was not appropriate in Littlestar's case. Under the market approach, Richardson valued Littlestar at $9 million. Under the income approach, Richardson valued Littlestar at $7.76 million. Richardson applied equal weight to the income and market approaches, to arrive at a gross valuation of $8.38 million.

¶ 28 Richardson then adjusted the valuation for goodwill. Richardson first determined that Littlestar's total goodwill was $3.09 million by subtracting the company's adjusted book value, which Richardson calculated was $5.29 million, from the $8.38 million gross valuation. Richardson then separated the total goodwill into personal goodwill and enterprise goodwill and assigned a value to each. To do this, Richardson applied the multi-attribute utility model (MUM). Under this model, Richardson selected 10 "attributes" for each of the two categories of goodwill. He then scored each attribute by assigning a value of one if the attribute had a "significant presence" and a value of zero if the attribute was weak or had no presence. This resulted in a "score" of six for personal goodwill and three for enterprise goodwill. Richardson therefore assigned $2.06 million, or two-thirds of the total goodwill of $3.09 million, to personal goodwill. Deducting respondent's personal goodwill reduced Littlestar's value to $6.32 million.

¶ 29 Finally, applying what he termed a "lack of marketability" discount, Richardson deducted 10% from the value of Littlestar—or $632,000—to arrive at a final valuation of $5.688 million. Richardson testified that a discount for a lack of marketability is required because Littlestar is not a publicly-traded company and there is a risk of loss in value in the time it will take to complete the sale of a closely-held company such as Littlestar. He admitted, however, that the risk of loss may never happen. Richardson further explained that he used the 10% figure because "[a] lot of times when you're working to sell smaller businesses, you have a broker involved" and there "would be a 10 percent cost to that to expedite that sale and that is where I landed *** on 10 percent."

¶ 30 On cross-examination, Richardson acknowledged that this was the first time he had been asked to divide total goodwill into personal and enterprise goodwill components. Richardson further stated that he was unable to determine from Hutler's report the value Hutler assigned to

total goodwill or enterprise goodwill. Richardson admitted that Hutler's method of weighting the years under the income approach, as opposed to averaging them or giving them equal weight, was within the acceptable industry standards for valuations. He stated that the decision how to weight the years was a matter of "professional judgment." Richardson also acknowledged that Hutler's method of calculating personal goodwill was within industry standards. In addition, he was unable to say that the values Hutler arrived at were not within "acceptable parameters." Richardson could not cite to any business valuation principle or standard that speaks to the lack-of-marketability concept or percentage. Rather, he simply stated that it was his opinion that such a concept should be applied.

¶ 31 Hutler reviewed the valuation report prepared by Richardson. Hutler testified that although he and Richardson used similar methodologies, there are three basic differences between his valuation and Richardson's valuation: (1) the weighting of the earnings; (2) the personal goodwill calculation; and (3) the lack-of-marketability discount. Regarding the weighting of the earnings, Hutler noted that under the income approach, Richardson merely took a straight average of each year's income instead of using a weighted average. Similarly, Richardson used a straight average instead of a weighted average in employing the market approach. Regarding personal goodwill, Hutler noted that Richardson assigned a value of $2.06 million to respondent's personal goodwill, which was almost twice as much as Hutler's figure. Although Hutler acknowledged that the MUM approach is used in the valuation community, he was critical of its subjective nature, including the selection of the attributes and the binary scoring scale. Hutler testified that the approach he employed eliminates this subjectivity as it takes into consideration the actual performance of the company in terms of calculating personal goodwill. Hutler further testified that the valuation community does recognize a discount for

lack of marketability. This concept addresses the marketability of stock and how well one can convert the stock into cash. Hutler stated, however, that he had never applied a lack-of-marketability discount to a controlling interest and that it was not appropriate in the present case where respondent held 100% of Littlestar. Hutler was also critical of the concept because, he opined, the discount should already be considered in the market approach analysis by the use of certain discount rates and multiples. Therefore, Hutler believed that Richardson's lack-of-marketability discount was "double dipping."

¶ 32 Over petitioner's objection, respondent also testified as to his opinion of the value of Littlestar. Respondent disagreed not only with Hutler's opinion, but also that of Richardson. Respondent took issue with the fact that neither expert used the cost approach in their valuation report and went so far as to say that he knew how to use the cost approach. Applying the cost approach, respondent opined that the value of Littlestar was between $3 million and $4 million.

¶ 33 On December 20, 2016, the trial court entered a judgment of dissolution of marriage, but reserved the remaining issues. On February 22, 2017, the trial court issued its verbal decision in this case. Relevant here, the trial court initially determined that Littlestar was "acquired" subsequent to the marriage and therefore there was a rebuttable presumption that it was marital property. The court rejected respondent's claim that he rebutted this presumption under section 503(a)(6.5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(a)(6.5) (West 2016)), which provides that "all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage" is non-marital property. 750 ILCS 5/503(a)(6.5) (West 2016). The court valued Littlestar at $5.688 million, which was the value placed on the business by Richardson. The court then turned to the factors in section 503(d) of the Act and concluded that petitioner was

entitled to 50 percent of the marital assets, including Littlestar. The court ruled that the transfer of property should be exempt from taxes. Finally, the court awarded petitioner permanent maintenance of $12,000 per month.

¶ 34 On March 31, 2017, the trial court entered a written order on the financial issues in accordance with its verbal decision. The written order provides in relevant part as follows:

> "1. A Judgment for Dissolution of Marriage was previously entered by the Court on December 20, 2016.
>
> 2. Littlestar Plastics, Inc. is marital property.
>
> 3. The value of Littlestar Plastics, Inc., as of 12/20/2016, is $5,688,000.00.
>
> 4. [Petitioner] is awarded fifty (50%) percent of the value of Littlestar Plastics, or $2,844,000.00. Judgment enters in favor of [petitioner], and against [respondent], in that amount. The Court retains jurisdiction to implement, or enforce, terms of payment.
>
> 5. The parties have previously divided all other marital assets to their mutual satisfaction through a series of pre-dissolution distributions/Court Orders.
>
> 6. [Petitioner] is awarded permanent maintenance from [respondent] in the amount of $12,000.00 per month. [Respondent] shall pay this amount directly to [petitioner] on, or before, the Fifteenth (15th) day of each month. Modification, or termination, of maintenance shall be governed by the applicable statutory provisions of the [Act]."

¶ 35 Both parties filed motions to reconsider. The trial court denied both motions. Respondent timely appealed, and petitioner timely cross-appealed.

¶ 36 II. ANALYSIS

¶ 37 A. Respondent's Appeal

¶ 38 As noted above, respondent raises two issues on appeal. First, he challenges the trial court's classification of Littlestar as marital property. Second, he disputes the trial court's distribution of the parties' marital assets. We address each contention in turn.

¶ 39 1. Classification of Littlestar

¶ 40 We first address respondent's argument that the trial court erred in classifying Littlestar as marital property. The disposition of property in a dissolution-of-marriage proceeding is governed by section 503 of the Act (750 ILCS 5/503 (West 2016)). *In re Marriage of James*, 2018 IL App (2d) 170627, ¶ 20. All property of the parties to a marriage belongs to one of three estates: (1) the husband's estate; (2) the wife's estate; or (3) the marital estate. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641-42 (1993). Before a court may dispose of property upon the dissolution of the marriage, it must determine to which of these estates the property belongs. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000). After the trial court classifies the property, it awards each spouse his or her nonmarital property and divides the marital property in "just proportions." 750 ILCS 5/503(d) (West 2016); *James*, 2018 IL App (2d) 170627, ¶ 20. The trial court must make specific factual findings as to its classification of assets as marital or nonmarital property. 750 ILCS 5/503(a) (West 2016). The trial court's classification of property as marital or nonmarital will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44; *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 669 (2008). The reason for this deferential standard of review is that the characterization of an asset typically depends upon assessing and weighing the credibility of the witnesses. *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 819 (2007). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based

on the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 41 Section 503(b)(1) of the Act (750 ILCS 5/503(b)(1) (West 2016)) creates a rebuttable presumption that all property acquired after the date of the marriage and before a judgment of dissolution of marriage is marital property regardless of the manner in which title is held. *Romano*, 2012 IL App (2d) 091339, ¶ 45. This presumption may be overcome by a showing of clear and convincing evidence that the property falls within one of the exceptions listed in section 503(a) of the Act (750 ILCS 5/503(a) (West 2016)). 750 ILCS 5/503(b)(1) (West 2016); *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 63. Clear and convincing evidence is a higher burden of proof than preponderance of the evidence but not quite as high as the beyond-a-reasonable-doubt burden in criminal cases. *In re Marriage of Wechselberger*, 115 Ill. App. 3d 779, 786 (1983). The burden of proof is on the party claiming that the property is nonmarital. *James*, 2018 IL App (2d) 170627, ¶ 28. Any doubts as to the nature of the property are resolved in favor of a finding that the property is marital. *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 24.

¶ 42 In this case, the trial court found that there was a rebuttable presumption that Littlestar constituted marital property because the business was established during the parties' marriage. The evidence of record supports this finding. The parties were married in September 1990, and, as explained more thoroughly below, the evidence presented at trial showed that respondent established Littlestar in June 1991, nine months into the marriage. Therefore, as the trial court found, Littlestar is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2016); *James*, 2018 IL App (2d) 170627, ¶ 28; *Romano*, 2012 IL App (2d) 091339, ¶ 45. Respondent does not dispute the trial court's finding in this regard, but contends that he rebutted this presumption by showing that Littlestar falls within one of the exceptions listed in section 503(a) of the Act (750

ILCS 5/503(a) (West 2016)).

¶ 43 In particular, respondent argues that he established that the acquisition of Littlestar fell within the exception set forth in section 503(a)(6.5) of the Act (750 ILCS 5/503(a)(6.5) (West 2016)). Section 503(a)(6.5) was added to the Act in 2016 (Pub. Act 99-90, § 5 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503)) and created a new category of nonmarital property. *James*, 2018 IL App (2d) 170627, ¶ 36. Section 503(a)(6.5) classifies as nonmarital property "all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage." 750 ILCS 5/503(a)(6.5) (West 2016). Section 503(a)(6.5) further provides that "to the extent that the marital estate repays any portion of the loan, it shall be considered a contribution from the marital estate to the non-marital estate subject to reimbursement." 750 ILCS 5/503(a)(6.5) (West 2016). Thus, under section 503(a)(6.5), if a spouse obtains a loan collateralized *solely* by nonmarital property and then uses the proceeds of that loan to acquire property during the marriage, the newly-acquired property is also classified as nonmarital. 750 ILCS 5/503(a)(6.5) (West 2016).

¶ 44 Respondent argues the loans he obtained from Alpine Bank in December 1991 and September 1992 and the loan he obtained from the SBA in 1993 were collateralized by nonmarital property, and the proceeds from the loans were used to "acquire" Littlestar. However, the trial court considered and rejected respondent's claim that Littlestar constituted nonmarital property pursuant to section 503(a)(6.5) of the Act (750 ILCS 5/503(a)(6.5) (West 2016)). As the trial court explained:

> "The loan signed by [respondent] personally to Alpine Bank on December 31st of 1991 ***, I find is not, quote, the sole use of nonmarital property as collateral for a loan that is used to acquire property during the marriage, unquote, under the exception 6.5.

> First of all, [respondent's] skill, business acumen, and personal creditworthiness I don't believe are nonmarital property. The other collateral for that December 31st, 1991, loan is the equipment in existence and to be purchased by the loan proceeds. This is not the sole use of nonmarital property as collateral. I don't believe that the 1991 loan fits within the exceptions of 6.5.
>
> Concerning the SBA loan of 1993, while incorporating the sole proprietorship of Littlestar and changing the business entity form, it did not create new and distinguishable property as nonmarital. It is more an expansion or improvement of the generic, quote, business, unquote. I would refer to *In Re the Marriage of Perlmutter*, citing *In Re the Marriage of Kennedy* [citation]. And even if it did, under the reasoning of *Perlmutter*, the new business if sufficiently separate and distinct would be marital. I find and hold that Littlestar *** is marital property."

Respondent insists that the trial court's finding was erroneous "in light of the uncontroverted and undisputed trial evidence." Specifically, respondent asserts that the collateral for the loans consisted of the equipment purchased with the proceeds and his "persona," neither of which are marital property. Respondent also takes issue with the trial court's finding that his skill, business acumen, and creditworthiness do not constitute nonmarital property and therefore could not serve as collateral for the loans.

¶ 45 We agree with the trial court that Littlestar was marital property not subject to the exception set forth in section 503(a)(6.5) of the Act. First, as shown by the testimonial and documentary evidence, Littlestar was already a going concern *before* respondent obtained the loans in question. The loans at issue were obtained on December 31, 1991, September 1, 1992, and in mid-to-late 1993. However, respondent established Littlestar in June 1991. To this end,

respondent entered into a lease for space in Rockford, recorded an "Assumed Name Certificate of Intention" certifying that he intended to conduct a machining services business in Winnebago County under the Littlestar name, and filed a "Certificate of Ownership of Business" indicating that he was the sole owner of Littlestar. Respondent also entered into a business relationship with Ols and filed a schedule C in 1991 as part of his federal income tax return. The schedule C showed that Littlestar's gross sales for 1991 were $49,980 and that the business had a net profit of $7179. In addition, on his application for the SBA loan and in the history of the company prepared in support of the same, respondent represented that Littlestar was established in June 1991. Thus, Littlestar had been operating and generating sales revenue for six or seven months *prior* to respondent obtaining the initial loan. Give these circumstances, we hold that Littlestar was not property respondent "acquired" by "the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage."

¶ 46 Respondent maintains, however, that Littlestar "owned no machines and produced no product and, therefore, was not a business until [respondent] personally took out the first business loan from Alpine Bank, collateralized only by the equipment purchased, his non-marital property, and by his persona, none of which are marital property." The record clearly does not support respondent's position. A "business" is defined as a "commercial enterprise carried on for profit." *Black's Law Dictionary* 192 (7th ed. 1999). As respondent testified, he entered into a business relationship with Ols shortly after founding Littlestar. Under this relationship, respondent secured sales orders under the Littlestar name and filled the orders using the machinery from Ols's company. Further, as reflected on respondent's 1991 federal tax return, Littlestar had gross sales approaching $50,000 and a net profit of over $7000. In light of these facts, Littlestar clearly constituted a commercial enterprise carried on for profit. As such, it

constituted a "business" before respondent obtained the initial loan from Alpine Bank on December 31, 1991. Respondent's claim to the contrary simply lacks merit.

¶ 47 Notwithstanding the fact that Littlestar was a going concern before respondent obtained the initial loan, and therefore could not have been "acquired" in accordance with the method set forth in section 503(a)(6.5), the trial court also could have reasonably concluded that respondent failed to show by clear and convincing evidence that the operative loans were collateralized *solely* by nonmarital property. As noted above, respondent claims that the December 31, 1991, loan from Alpine Bank was collateralized by the equipment purchased and his "persona," both of which are nonmarital property. Respondent's position is not supported by relevant authority or the record.

¶ 48 First, respondent insists that the initial loan from Alpine was collateralized by his "persona," which he classifies as nonmarital property. However, respondent fails to offer any argument or authority for this proposition. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (providing that an appellant's brief must include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). The failure to provide an argument and to cite to authority results in the party forfeiting consideration of the issue. *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 32.

¶ 49 Second, even accepting respondent's claim that the December 31, 1991, loan from Alpine Bank was collateralized by the equipment purchased and that this equipment constituted nonmarital property, respondent still failed to establish that the acquisition of Littlestar fell within the exception set forth in section 503(a)(6.5) of the Act (750 ILCS 5/503(a)(6.5) (West 2016)). In this regard, we note that the promissory note for the December 31, 1991, loan lists as

collateral not only equipment, but also inventory, accounts and other rights to payment, and general intangibles. Respondent does not present any argument that these other items of collateral are nonmarital property. Even assuming these other assets constituted nonmarital property, the promissory note also referenced an attachment listing additional collateral. However, a copy of the attachment was not included in the record, and respondent does not indicate what items of collateral are set forth in the attachment. Respondent, as the party claiming that Littlestar is nonmarital, bore the burden of proof on this issue by clear and convincing evidence. *James*, 2018 IL App (2d) 170627, ¶ 28; *Dann*, 2012 IL App (2d) 100343, ¶ 63. Respondent's failure to present evidence regarding each item of property used as collateral for the December 31, 1991, loan renders it impossible to determine whether the loan was collateralized *solely* by nonmarital property as required by section 503(a)(6.5) (750 ILCS 5/503(a)(6.5) (West 2016)). See *Dhillon*, 2014 IL App (3d) 130653, ¶ 24 (noting that any doubts as to the nature of property are resolved in favor of a finding that the property is marital).

¶ 50 Similarly, we observe that the promissory note for the September 1, 1992, loan from Alpine Bank lists as collateral inventory, equipment, accounts and other rights to payment, general intangibles, as well as two specified machines and all related tooling and accessories. However, respondent does not expressly argue in his brief that the items of collateral listed in the promissory note of September 1992 constitute nonmarital property. Respondent's failure to provide an argument and to cite to authority in this regard results in forfeiture. *Kane*, 2016 IL App (2d) 150774, ¶ 32.

¶ 51 Finally, in relation to the SBA loan, respondent asserts that he provided a personal guaranty, a list of the machinery and equipment purchased, and a certificate of business ownership. He further claims that petitioner did not sign any of the foregoing documents.

However, petitioner testified she signed a promissory note for the SBA loan. Moreover, the parties executed two mortgage documents in connection with the SBA loan, both of which were recorded against the Machesney Park home. The Machesney Park home lists both respondent and petitioner as joint tenants. Further, the Machesney Park home, having been purchased during the marriage, is presumably marital property, and respondent does not advance any argument that the Machesney Park home was acquired by a method set forth in section 503(a) of the Act. 750 ILCS 5/503(b)(1) (West 2016). Given the foregoing, we cannot say that the trial court's finding that respondent failed to overcome the presumption that Littlestar constituted marital property was against the manifest weight of the evidence.

¶ 52 Respondent also disputes the trial court's finding that his personal skill, business acumen, and creditworthiness did not constitute nonmarital property. According to respondent, it was these skills that created Littlestar. Respondent contends that he acquired all of his education, business acumen, and manufacturing experience prior to even meeting petitioner. Respondent further notes that when he married petitioner "he had a car, a house he had purchased in 1984, money in the bank[,] and a good credit rating." Again, however, respondent cites no authority in support of his position that these "assets" constitute nonmarital property. As a result, respondent has forfeited this claim. *Kane*, 2016 IL App (2d) 150774, ¶ 32. Respondent does direct us to *In re Marriage of Thornley*, 361 Ill. App. 3d 1067 (2005), and *In re Marriage of Weinstein*, 128 Ill. App. 3d 234 (1984), for the proposition that "Illinois courts have *** consistently held that a spouse's professional degree or license, even when attained during the marriage, are not marital assets subject to division." However, respondent's reliance on *Thornley* and *Weinstein* is misplaced. First, we are unaware of any ruling by the trial court in this case that respondent's professional degree was subject to division. Second, respondent takes the proposition for which

he cites *Thornley* and *Weinstein* out of context. At issue in both those cases was how to divide the marital assets and award maintenance or other relief when one spouse engaged in employment to support the family unit while the other pursued academic interests. *Thornley*, 361 Ill. App. 3d at 1074-75; *Weinstein*, 128 Ill. App. 3d at 238-46. The courts in both *Thornley* and *Weinstein* found that although a professional license or scholastic degree does not constitute a property interest subject to division as a marital asset, the contributing spouse is entitled to some form of compensation for the financial efforts and support provided to the student spouse in the expectation that the marital unit would prosper in the future. *Thornley*, 361 Ill. App. 3d at 1074 (citing *In re Marriage of Rubinstein*, 145 Ill. App. 3d 31, 39 (1986)); *Weinstein*, 128 Ill. App. 3d at 241-46. This factual scenario is not present in this case. As such, these cases have no application here.

¶ 53 Respondent also cites to *Heroy*, 385 Ill. App. 3d 640, and *In re Marriage of Eddy*, 210 Ill. App. 3d 450 (1991), in support of his position that the trial court erred. However, respondent merely sets forth the facts of those cases with no explanation as to how they apply here. In any event, for the reasons set forth below, *Heroy* and *Eddy* are not determinative. In *Heroy*, the year after the parties' marriage, the husband and his brother purchased property from their parents in exchange for a promissory note. The brothers made no down payment, and they paid the monthly installments on the note entirely from rental income generated by the property. During the marriage, the brothers also obtained various loans, using the property as collateral, and repaying the loans using proceeds from the property. The trial court found that the property acquired from the husband's parents was a nonmarital asset. The wife contested the trial court's finding on appeal. The *Heroy* court concluded that the husband had proven that the property fell under the "exchange" exception of section 503(a)(2) of the Act (750 ILCS 5/503(a)(2) (West

2006) (providing that "property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, legacy, or descent" is considered nonmarital property)). *Heroy*, 385 Ill. App. 3d at 671-72. The court reasoned that because the husband paid for the property with income generated by the property, he "acquired real estate without ever using marital income or assets to secure and repay the original and subsequent loans on the property." *Heroy*, 385 Ill. App. 3d at 672.

¶ 54 In *Eddy*, the husband and his brother inherited property from their father during the husband's marriage. The husband and his brother later formed a partnership to purchase three McDonald's restaurants. The money to purchase the restaurants came from loans made to the brothers and from a mortgage and loan secured by the inherited property. The income from the restaurants was used to repay the loans. The trial court found the restaurants, although acquired during the marriage, constituted nonmarital property. The wife appealed. Initially, the *Eddy* court determined that the inherited property fell under the "exchange" exception of section 503(a)(2) of the Act (Ill. Rev. Stat. 1987, ch. 40, par. 503(a)(2)). *Eddy*, 210 Ill. App. 3d at 456. The *Eddy* court then considered whether the restaurants were nonmarital property acquired in exchange for nonmarital property. *Eddy*, 210 Ill. App. 3d at 456-58. The *Eddy* court found the restaurants to be nonmarital property because the collateral for the loans and the funds used to purchase the restaurants came from the properties the husband received through inheritance and as gifts. *Eddy*, 210 Ill. App. 3d at 457-58. Moreover, since the restaurant business repaid the loans, the court found clear and convincing evidence that the assets were acquired by exchanging nonmarital property for them. *Eddy*, 210 Ill. App. 3d at 458.

¶ 55 *Heroy* and *Eddy* are distinguishable from the present case. Significantly, both cases predate the amendment adding subsection (6.5) to section 503(a) of the Act. Indeed, the courts

in *Heroy* and *Eddy* addressed whether the property in question fell within the exchange exception, not whether the property was acquired with loan proceeds collateralized solely by nonmarital property. *Heroy*, 385 Ill. App. 3d at 671-72; *Eddy*, 210 Ill. App. 3d at 456-58. Moreover, this court has previously declined to follow *Heroy* and *Eddy*, finding the rationales in those cases "somewhat obscure." *Dann*, 2012 IL App (2d) 100343, ¶ 102 (noting that the courts in both *Heroy* and *Eddy* purportedly applied the "exchange" exception of section 503(a)(2), but the funds exchanged for the assets in question were acquired during the marriage, and it was unclear what exception the courts believed the funds themselves satisfied). Respondent does not advance any cogent reason for departing from our holding in *Dann*. In fact, as noted earlier, he does not explain the significance of *Heroy* and *Eddy* to this case.

¶ 56 Respondent also directs us to *In re Marriage of Wilder*, 122 Ill. App. 3d 338 (1983), in support of his claim that Littlestar is nonmarital property. In *Wilder*, the parties married in 1968. At the time of the marriage, the husband, an ophthalmologist, had been operating a sole proprietorship for 10 years. Two years after the marriage, another doctor joined the husband's practice. At that time, the husband changed the form of his business to a professional corporation. Thereafter, the husband transferred 50% of the stock to the other doctor. The instrument of conveyance of assets executed at that time provided that the husband received 10 shares of stock with a par value of $100 per share and a $5000 note in exchange for his office furniture and equipment. The office furniture and equipment were acquired prior to the marriage. The trial court classified the stock in the professional corporation as nonmarital property. The wife appealed. The *Wilder* court held that the husband had met his burden of proving the stock was acquired exclusively in exchange for nonmarital property under the exchange exception. *Wilder*, 122 Ill. App. 3d at 345-46. *Wilder* is easily distinguishable from

the present case. In *Wilder*, the husband both established his business and acquired the furniture and equipment at issue prior to the marriage. During the marriage, the husband transferred nonmarital assets from the sole proprietorship (the office furniture and equipment) in exchange for the shares of stock and the loan. Here, in contrast, respondent established Littlestar *during* the marriage and respondent presented insufficient evidence to establish by clear and convincing evidence that he transferred nonmarital assets in exchange for the loans in question.

¶ 57 Respondent also raises an issue of statutory construction, complaining that the trial court failed to consider the plain language of section 503(a)(6.5). Respondent's statutory construction argument, however, is not much of an argument at all. Respondent sets forth some principles of statutory construction. He states that the plain language of section 503(a)(6.5) is unambiguous and that by enacting this provision the legislature intended to change the law to expressly provide that property acquired after the marriage by the sole use of nonmarital property as collateral for a loan is itself nonmarital property. Respondent then asserts that given the plain language of the statute, Littlestar should be considered nonmarital property. Absent from respondent's argument, however, is any analysis as to how the trial court failed to implement the plain language of the statute. Indeed, we interpret this argument simply as a claim that the trial court's decision was against the manifest weight of the evidence. We have already rejected this argument, and respondent advances no novel reason in this guise to reach a different conclusion.

¶ 58 2. Division of Marital Property

¶ 59 Respondent also challenges the trial court's division of marital property. As noted, once the trial court classifies the property as either marital or non-marital, it must divide the parties' marital property "in just proportions considering all relevant factors." 750 ILCS 5/503(d) (West 2016); *James*, 2018 IL App (2d) 170627, ¶ 20. Among the factors for the trial court to consider

are: (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or nonmarital property; (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; (6) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each spouse; (7) whether the apportionment is in lieu of or in addition to maintenance; (8) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and (9) the tax consequences of the property division upon the respective economic circumstances of the parties. 750 ILCS 5/503(d) (West 2016); see also *In re Marriage of Faber*, 2016 IL App (2d) 131083, ¶ 41.

¶ 60 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 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. As the entity closest to the litigation and as the trier of fact, the trial court's credibility determinations are given great deference and there is a strong presumption that the trial court made the proper decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). We apply the manifest-weight-of-the-evidence standard to the trial court's factual findings as to each section 503(d) factor, but the abuse-of-discretion standard in reviewing the trial court's final property division. *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 is arbitrary, unreasonable, or not based upon the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 86. A trial court abuses its discretion only if no reasonable person would have divided the property in the

same manner as the trial court. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 183 (2002).

¶ 61 Here, the trial court found that Littlestar was marital property, and it valued the company at $5.688 million. The court then considered the relevant section 503(d) factors and awarded petitioner 50% of the value of Littlestar, or $2.844 million. The court did not explicitly value the parties' other assets, finding the parties "previously divided all other marital assets to their mutual satisfaction through a series of pre-dissolution distributions/Court Orders." In addition, the court awarded petitioner permanent maintenance in the amount of $12,000 per month, the equivalent of $144,000 per year.

¶ 62 Respondent argues that the trial court abused its discretion in its division of the parties' marital assets by failing to appropriately consider several of the factors set forth in section 503(d) of the Act (750 ILCS 5/503(d) (West 2016)). Specifically, respondent complains that the trial court did not consider: (1) his contributions to the increase in value of the parties' marital assets (750 ILCS 5/503(d)(1) (West 2016)); (2) the value of property assigned to each spouse (750 ILCS 5/503(d)(3) (West 2016)); and (3) the tax consequences of the proposed division (750 ILCS 5/503(d)(12) (West 2016)). In addition, respondent complains that the trial court erred by counting the value of his personal goodwill twice—once in valuing Littlestar and once in establishing the maintenance award. We turn to respondent's claims now.

¶ 63 a. Respondent's Contributions to the Marital Estate

¶ 64 First, respondent argues that the trial court erred in its division of marital property by failing to appropriately consider his contribution to the acquisition, preservation, and increase in value of the marital property. See 750 ILCS 503(d)(1) (West 2016). According to respondent, his contribution to the marital estate "constituted literally the entire increase in its value during the marriage." In support of his position, respondent notes that Littlestar grew from a startup

company with gross revenues of about $50,000 in 1991 to a multi-million dollar business today. Respondent attributes this growth to his education, experience, talents, expertise, business acumen, sales skills, and hard work "without any contribution whatsoever from [petitioner]." Yet, he complains, the trial court "gave [his] contribution no consideration or weight and simply divided Littlestar equally." We disagree.

¶ 65 Contrary to respondent's claim, the trial court did consider section 503(d)(1) in dividing the marital estate. Specifically, the trial court found that respondent made "significant financial contributions to the marital estate," and, therefore this factor weighed more heavily in favor of respondent than petitioner. This finding is not against the manifest weight of the evidence. Nevertheless, the court went on to observe that this is just one of several factors in section 503(d) that it was required to consider and that some of the other factors favored petitioner. For instance, the court commented on the long duration of the parties' marriage. 750 ILCS 5/503(d)(4) (West 2016). The court also remarked on petitioner's age, occupation, and the disparity in the parties' vocational skills. 750 ILCS 5/503(d)(8) (West 2016)). Further, the court found that respondent ran Littlestar "highly successfully" during the pendency of the dissolution proceedings and will continue to do so for the foreseeable future. 750 ILCS 5/503(d)(11) (West 2016). In addition, the court mentioned whether the apportionment was in lieu of or in addition to maintenance (750 ILCS 5/503(d)(10) (West 2016)) and the tax consequences of the property division (750 ILCS 5/503(d)(12) (West 2016)). Finally, the court observed that while there was no claim of dissipation (750 ILCS 5/503(d)(2) (West 2016)), respondent treated Littlestar "as his personal checking account" as evidenced by the "loan" for the Florida property, which was not supported by a note or other documentation.

¶ 66 We also observe that respondent's suggestion that petitioner made absolutely no

contribution to the growth and success of Littlestar finds no basis in the record. To be sure, the record establishes that respondent was the driving force of the company. However, in October 1993, just over two years after founding Littlestar, respondent asked petitioner for help running the business side of Littlestar because he could not keep up with the paperwork. At first, petitioner worked in the shipping department. She later transitioned to bookkeeping and human resources, performing tasks involving payroll, accounts payable and receivable, insurance, financial statements, and employee onboarding. Petitioner remained with the company for over 16 years, during which she became knowledgeable about Littlestar's manufacturing processes and its customers. In addition, petitioner served as Littlestar's vice president and secretary from the late nineties until the commencement of the dissolution proceeding. Thus, although petitioner may not possess an engineering degree, the evidence suggests that she served a vital role in helping Littlestar to operate on a daily basis for more than 16 years.

¶ 67 b. Value of Property Assigned to Each Spouse

¶ 68 Respondent also complains that the trial court erred in its division of the marital property by failing to appropriately consider the value of the property assigned to each spouse. 750 ILCS 5/503(d)(3) (West 2016). Specifically, respondent asserts that the trial court "did not even consider the undisputed fact that [petitioner], during the pendency of the divorce and prior to the trial of this matter, had received an additional amount of nearly three quarters of a million dollars as partial distributions pursuant to the Trial Court's own Orders." We disagree.

¶ 69 Basically, respondent suggests that petitioner received $750,000 in pre-dissolution distributions while he received nothing. However, the record establishes that the pre-dissolution distributions of property were accomplished almost entirely through the execution of agreed orders pursuant to which each party received property of nearly identical value. Pursuant to the

November 20, 2013, agreed order, respondent received $470,000 in assets and petitioner received $476,000 in assets. Pursuant to the agreed order entered on June 11, 2014, respondent paid petitioner $75,000 for her interest in the parties' 1933 Ford, 1967 Cessna airplane, and a motorhome. At trial, respondent agreed that $75,000 represented half the value of these assets. Pursuant to the agreed order filed August 22, 2014, respondent paid petitioner $182,500 for her interest in the parties' home in Poplar Grove. Again, at trial, respondent agreed that $182,500 represented half of the appraised value of the Poplar Grove home. Pursuant to the agreed order entered on February 25, 2015, respondent paid petitioner $134,000 for her half of the parties' interest in Preston Holdings, LLC. Petitioner also received $44,904 as her half of the proceeds from the sale of the parties' lot in Michigan and $83,000 as her half of the proceeds from the sale of the parties' farm.

¶ 70 Moreover, respondent's claim that the trial court failed to consider these distributions in dividing the parties' property is belied by the record. In announcing its verbal decision, the trial court expressly referenced the pre-dissolution distributions, remarking that "[t]he parties have reached agreements as to many other issues and assets that were represented to the Court and all of those agreements are ratified and approved." The trial court also documented in its March 31, 2017, written order on the financial issues that "[t]he parties have previously divided all other marital assets to their *mutual satisfaction* through a series of pre-dissolution distributions/Court Orders." (Emphasis added.) Thus, contrary to respondent's claim, the trial court did consider the pre-dissolution distributions in dividing the parties' property. Indeed, having agreed to the division of the parties' other assets prior to trial, it is somewhat disingenuous of respondent to now complain that the trial court failed to appropriately consider this factor.

¶ 71 c. Tax Consequences

¶ 72 Next, respondent argues that the trial court erred in its distribution of the marital property by failing to appropriately consider the tax consequences of the property division. 750 ILCS 5/503(d)(12) (West 2016). Specifically, respondent claims that although the trial court mentioned section 503(d)(12) in its verbal decision, it failed to consider the tax consequences of a future payout of $2.844 million to petitioner. According to respondent, the trial court "completely ignored the uncontroverted, undisputed and agreed upon evidence that there would in fact be massive tax consequences of any payout from Littlestar to [petitioner]." We do not find this point well taken.

¶ 73 As mentioned earlier, the trial court did reference the tax consequences. Specifically, the court observed that no expert testified as to any potential tax consequences. Respondent nevertheless insists that the trial court's analysis as to this factor was deficient because he presented testimony at trial regarding the tax consequences of the property division if he were to convert Littlestar to cash or liquidate the company, testimony which the trial court allegedly ignored. Respondent also claims that the trial court failed to consider the tax consequences to him individually if he paid the award to petitioner over a seven-year period or if Littlestar paid petitioner directly. However, the tax consequences that must be considered by the trial court are those that "immediately flow" from the trial court's decision. *In re Marriage of Perino*, 224 Ill. App. 3d 605, 609 (1992). The court cannot consider the tax consequences of actions which are not made necessary by reason of the judgment entered or tax consequences which are remote or the result of voluntary actions. *In re Marriage of Emken*, 86 Ill. 2d 164, 167 (1981); *Perino*, 224 Ill. App. 3d at 609; *In re Marriage of Parker*, 252 Ill. App. 3d 1015, 1020 (1993).

¶ 74 In this case, the trial court's verbal pronouncement and its March 31, 2017, order on financial issues classified Littlestar as marital property, assigned a value to the asset, awarded

petitioner $2.844 million (50% of Littlestar's value), and entered judgment in that amount in petitioner's favor. The court retained jurisdiction "to implement, or enforce, terms of payment." Significantly, the court did not order respondent to convert Littlestar to cash, liquidate the company, or pay petitioner over a seven-year period and it did not order Littlestar to pay petitioner directly. Therefore, the tax ramifications, if any, arising from the scenarios presented by respondent are purely hypothetical and do not "immediately flow" from the trial court's judgment in this case. As such, the trial court was not required to speculate as to the existence and amount of future tax liabilities under these scenarios. See *Parker*, 252 Ill. App. 3d at 1020 (holding that since the trial court did not order a sale of the property it was not required to consider the tax consequences of a sale); *In re Marriage of Hawkins*, 160 Ill. App. 3d 71, 79 (1987) (observing that the court should not speculate as to future tax liabilities when no such sale is contemplated by the parties or required by the court's division of property). Accordingly, we reject respondent's claim that the trial court failed to appropriately consider the tax consequences of the property division.

¶ 75 d. Respondent's Personal Goodwill

¶ 76 Lastly, respondent complains that the trial court "improperly considered his 'personal goodwill' in the value of Littlestar and the division thereof, while, at the same time, it considered his 'personal goodwill' in determining a maintenance award." Stated differently, it is respondent's position that the trial court improperly counted his personal goodwill twice—once in valuing Littlestar and once in setting the maintenance award.

¶ 77 Goodwill represents the ability to acquire future income and has been defined as " ' "the value of a business or practice that exceeds the combined value of the physical assets." ' " *In re Marriage of Talty*, 166 Ill. 2d 232, 238 (1995) (quoting *In re Marriage of White*, 151 Ill. App. 3d

778, 780 (1986) (quoting 2 Valuation and Distribution of Marital Property, § 23.04[1] (M. Bender ed. 1984))). There are two categories of goodwill—enterprise and personal. *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 195 (2006). Enterprise goodwill is that which exists independently of an individual's personal efforts and will outlast the individual's involvement with the business. *Talty*, 166 Ill. 2d at 240. In contrast, personal goodwill is that which is attributable to an individual's personal efforts and will cease when the individual's involvement with the business ends. *Talty*, 166 Ill. 2d at 240. While enterprise goodwill is considered a marital asset for the purposes of the just division of marital property, personal goodwill is not. *Talty*, 166 Ill. 2d at 240; *Alexander*, 368 Ill. App. 3d at 195. As explained by our supreme court, the reason for this distinction is that the same elements that constitute personal goodwill are already considered under other factors in section 503(d). *Talty*, 166 Ill. 2d at 240. Thus, to consider personal goodwill in addition to these other factors would result in an impermissible double counting. *Talty*, 166 Ill. 2d at 238-40; see also *In re Marriage of Schneider*, 214 Ill. 2d 152, 167 (2005) (concluding that since the personal goodwill in the husband's dental practice was considered by the trial court in assessing the section 503(d) factors, any further consideration of that goodwill in valuing the husband's dental practice would result in an impermissible double counting).

¶ 78 In this case, the record does not support respondent's claim that the trial court double counted his personal goodwill in Littlestar. The trial court valued Littlestar at $5.688 million. As the trial court noted, this was the final valuation placed on the business by Richardson, respondent's expert. Richardson used both the market approach and the income approach in valuing Littlestar. Under the market approach, Richardson valued Littlestar at $9 million. Under the income approach, Richardson valued Littlestar at $7.76 million. Richardson averaged these

two values to arrive at a gross valuation of $8.38 million. Richardson then adjusted the valuation for goodwill and lack of marketability. With respect to goodwill, Richardson determined that Littlestar's total goodwill was $3.09 million by subtracting the company's adjusted book value ($5.29 million) from his gross valuation of $8.38 million. Richardson then separated the total goodwill into personal goodwill and enterprise goodwill. Using the MUM approach, Richardson valued respondent's personal goodwill at $2.06 million. Richardson deducted respondent's personal goodwill from the gross valuation. He also deducted $632,000 from the gross valuation for a lack-of-marketability discount. This resulted in his final valuation figure of $5.688 million. Thus, there is no evidence in the record to support respondent's claim that the trial court included his personal goodwill in the valuation of Littlestar. Since the trial court did not include respondent's personal goodwill in its valuation of Littlestar, it could not have double counted it when establishing respondent's maintenance obligation.

¶ 79 In sum, there is nothing in the record or the judgment of dissolution of marriage to suggest that the trial court failed to appropriately consider the section 503(d) factors in dividing the parties' marital property. As a result, we find that the trial court's division of marital property did not constitute an abuse of discretion.

¶ 80 B. Petitioner's Cross-Appeal

¶ 81 In her cross-appeal, petitioner raises three arguments. First, she argues that the trial court erred in its valuation of Littlestar. Second, she contends that the trial court erred in setting the amount of respondent's maintenance obligation. Third, she argues that the trial court erred by not awarding her more than 50% of the marital assets.

¶ 82 1. Valuation of Littlestar

¶ 83 Petitioner first contends that the trial court erred in its valuation of Littlestar. As noted

previously, once the trial court classifies property as either marital or non-marital, it must divide the parties' marital property in "just proportions." 750 ILCS 5/503(d) (West 2016). Thus, in apportioning marital assets under section 503(d), the court must first establish the value of the property. *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 736 (2002); *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 16-17 (1999). To properly do so, the court must have before it competent evidence of value. *In re Marriage of Stone*, 155 Ill. App. 3d 62, 70 (1987). It is the obligation of the parties in a dissolution proceeding to present sufficient evidence as to the value of the marital assets. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 40. Valuation of marital property is a question of fact. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 56. It is within the province of the trier of fact to assess the credibility of the witnesses, assign weight to the evidence, and resolve conflicts in the evidence (see *McHenry*, 292 Ill. App. 3d at 641; *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992); *In re Marriage of Weinberg*, 125 Ill. App. 3d 904, 909-10 (1984)), and a valuation within the range of competent evidence presented at trial will ordinarily not be disturbed on appeal (*In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 74; *Weinberg*, 125 Ill. App. 3d at 910). We review the trial court's findings of fact under the manifest-weight-of-the-evidence standard. *In re Marriage of Abrell*, 236 Ill. 2d 249, 273 (2010). As noted, a decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where the court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 84 In support of her claim that the trial court erred in valuing Littlestar, petitioner cites two principle reasons. First, she claims that the trial court erred in accepting Richardson's figures as to respondent's personal goodwill and Littlestar's lack of marketability. Second, she argues that the trial court improperly gave "substantial consideration" to respondent's own opinion as to the

value of Littlestar. We find neither claim persuasive.

¶ 85 a. Richardson's Valuation

¶ 86 Petitioner argues that the trial court erred in accepting Richardson's figures as to respondent's personal goodwill and Littlestar's lack of marketability. Petitioner contends that the trial court erred by accepting Richardson's $2.06 million valuation of respondent's personal goodwill because Richardson's opinion was "far too subjective, and far too suspect, to be accepted by the court." In particular, petitioner criticizes the MUM approach employed by Richardson and its use of the binary scoring system, describing it as a " 'cherry picking' approach designed to skew the results." She also suggests that Richardson's testimony was suspect because he had never before performed a valuation where he was required to separate personal goodwill from enterprise goodwill. Additionally, petitioner argues that Richardson's testimony regarding a lack of marketability was "strained." In this regard, petitioner maintains that Richardson offered alternative reasons for his 10% lack-of-marketability discount, but was unable to justify it by pointing to any principle or standard in the valuation industry.

¶ 87 The trial court valued Littlestar at $5.688 million, which is the valuation calculated by Richardson. Implicit in this decision was that the trial court also agreed with Richardson's valuation of respondent's personal goodwill and that it agreed that a lack-of-marketability discount was appropriate. The trial court's findings are well supported by the evidence presented at trial. In this regard, we observe that the trial court was presented with conflicting opinions from Hutler and Richardson on these issues. Hutler valued respondent's personal goodwill using the "with-and-without method" while Richardson valued respondent's personal goodwill using the MUM approach. The "with-and-without method" involved comparing Littlestar's projected cash flow over the five upcoming years under two circumstances—if respondent had left the

business with a non-compete agreement and if he had left the business without a non-compete agreement. Using this method, Hutler valued respondent's personal goodwill at $1.089 million. The MUM approach involved dividing Littlestar's total goodwill into two components—personal goodwill and enterprise goodwill—and then assigning a "score" to each component. To do this, Richardson selected 10 attributes for each component and used a binary scoring system, assigning a value of one to those attributes that have a "significant presence" and a value of zero to those attributes that are weak or have no presence. Using the MUM approach resulted in a score of six for personal goodwill and three for enterprise goodwill. Richardson therefore assigned $2.06 million, or two-thirds of the total goodwill, to personal goodwill. Richardson further testified that a lack-of-marketability discount was required because Littlestar is not a publicly-traded company and there is a risk of loss in value in the time it will take to complete the sale of a private company such as Littlestar. Richardson explained that he settled on a 10% discount because a broker would likely be involved in the sale. In contrast, Hutler testified that he had never applied a lack-of-marketability discount to a controlling interest and that it was not appropriate in the present case where respondent held 100% of Littlestar. Hutler was also critical of the concept because he opined that the discount should already be considered in the market approach analysis by the use of certain discount rates and multiples. Thus, he opined, Richardson's lack-of-marketability discount was "double dipping."

¶ 88 In addressing the issue of the valuation of respondent's personal goodwill, the trial court acknowledged the experts' conflicting opinions and highlighted weaknesses in each expert's testimony. For instance, the court noted that Hutler's calculation was based on assumptions regarding net sales lost to competition if respondent left Littlestar without a non-compete agreement while Richardson had never previously "split" goodwill into personal and enterprise

components. Nevertheless, the court noted that the methods used by both experts to calculate respondent's personal goodwill were accepted in the valuation industry. Similarly, with respect to the lack-of-marketability discount, the trial court acknowledged Hutler's opinion that such a discount is factored in elsewhere and Richardson's opinion that such a discount is appropriate because of the lack of a public market and the costs involved in such a sale. Ultimately, the court determined that a lack-of-marketability discount was appropriate due to the lack of a public market. Given the conflicting valuation opinions, the trial court's role as fact finder, and the deferential standard of review, we cannot say that the trial court's valuation of respondent's personal goodwill or its use of a lack-of-marketability discount was against the manifest weight of the evidence.

¶ 89 In fact, petitioner's arguments to the contrary amount to nothing more than an invitation to re-weigh the evidence. For instance, while the MUM approach undoubtedly contains subjective components, Hutler himself acknowledged that this approach was accepted in the valuation industry. Moreover, although this was the first valuation performed by Richardson in which he had to separate personal goodwill from enterprise goodwill, it is clear that the trial court weighed this fact in reaching its decision and petitioner offers no cogent reason why the court was required to reject Richardson's personal goodwill valuation based solely on the fact that he had not had the opportunity to split the components of goodwill before. Likewise, even if Richardson was unable to cite any principle or standard in the industry to justify the use of a lack-of-marketability discount, the trial court was aware of this testimony. Moreover, Hutler admitted that a lack of marketability discount is accepted in the valuation industry. As noted above, it is within the province of the trier of fact to assess the credibility of the witnesses, assign weight to the evidence, and resolve conflicts in the evidence. See *McHenry*, 292 Ill. App. 3d at

641; *Gunn*, 233 Ill. App. 3d at 183; *Weinberg*, 125 Ill. App. 3d at 909-10. Thus, it was the trial court's prerogative to weigh the evidence and resolve the conflicts therein, and we will not disturb the court's decision on the matter.

¶ 90 b. Respondent's Valuation Testimony

¶ 91 Petitioner also complains that the trial court improperly gave "substantial consideration" to respondent's opinion as to the value of Littlestar. Petitioner concedes that the trial court valued Littlestar within the range testified to by the two experts presented at trial. Nevertheless, she asserts that the court's valuation was based in part on respondent's testimony as to the value of the company. According to petitioner, respondent, as a non-expert witness, was not qualified to testify to an ultimate fact such as the value of a business. See *City of Chicago v. Evanston*, 279 Ill. App. 3d 255, 269 (1996). In support of her position that the trial court improperly considered respondent's valuation testimony, petitioner emphasizes four selected portions of the court's February 22, 2017, verbal decision. First, she cites a remark from the trial court that it "heard extensively from [respondent] himself concerning his *opinion* and reasoning for the *valuation* of the company." (Emphasis supplied by petitioner.) Second, she observes that the court referenced respondent's "opinion" that Littlestar is worth approximately three to four million dollars under the cost approach. Third, she notes that, at one point, the court stated, "If I were to accept [respondent's] *valuation*. . . ." (Emphasis supplied by petitioner.) Finally, petitioner refers to a statement by the trial court that Richardson's valuation of Littlestar "is not vary far off from [respondent's] total assets of $5,247,000." We conclude that petitioner's claim that the trial court gave "substantial consideration" to respondent's testimony finds no basis in the record.

¶ 92 Initially, we note that, in violation of the rules of our supreme court, petitioner does not

explain how these remarks support her claim that the court gave "substantial consideration" to respondent's valuation testimony. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (providing that an appellant's brief must include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). She merely cites the passages reproduced above and concludes that "[o]n the face of its decision, the court gave substantial consideration to, and was influenced by, [respondent's] non-expert, opinion testimony." The failure to develop an argument and to cite to authority results in the party forfeiting consideration of the issue. *Kane*, 2016 IL App (2d) 150774, ¶ 32.

¶ 93 Forfeiture notwithstanding, petitioner takes the trial court's remarks out of context. In announcing its decision as to the value of Littlestar, the trial court noted that two entire days of the hearing consisted of the parties' expert testimony as to the valuation of Littlestar. Thus, the court found it helpful to thoroughly review the valuation testimony. The court's statement that it "heard extensively from [respondent] himself concerning his opinion and reasoning for the valuation of the company" and its statement regarding respondent's opinion that Littlestar was worth between three and four million dollars were merely references to the evidence presented at the hearing. These statements in no way support petitioner's claim that the trial court gave any consideration to respondent's testimony regarding the value of Littlestar, much less substantial consideration.

¶ 94 To understand the third remark referenced by petitioner, it is helpful to reproduce the entire paragraph from which it came:

> "[Respondent's] Demonstrative [Exhibit] No. 45 claims that the final asset value is 1,790,000 plus the cash of 3,457,555 with a total assets [*sic*] in the company of $5,247,550 [*sic*]. [Respondent] then does a subtraction based upon some tax events. I

> would note that neither expert does any type of tax calculation event. If I were to accept [respondent's] valuation, this would mean that there was zero value as an ongoing concern without him."

Thus, when placed in context, it is clear the court was merely discussing a hypothetical scenario—respondent's testimony regarding the value of Littlestar if he left the business. Similarly, the trial court's remark that Richardson's valuation of Littlestar "is not vary far off from [respondent's] total assets of $5,247,000" does not support petitioner's claim that the court gave "substantial consideration" to respondent's valuation testimony. Accordingly, as with the first two statements referenced by petitioner, neither of the latter two statements supports petitioner's claim that the trial court gave any consideration to respondent's testimony regarding the value of Littlestar.

¶ 95 In fact, when the trial court's verbal decision is read as a whole, it is apparent that the court was actually critical of respondent's testimony regarding the valuation of Littlestar. For instance, the court found respondent's valuation testimony was inconsistent with financial statements he submitted to a bank in 2015 and 2016. As noted, the court also criticized respondent for placing a zero value on Littlestar under the hypothetical scenario if he left the business. We also point out that the court's $5.688 million valuation of Littlestar was substantially higher than respondent's testimony, which valued the business at between three and four million dollars. Finally, in ruling on the parties' posttrial motions, we note that the trial court expressly rejected petitioner's claim that it accepted respondent's valuation of Littlestar. In light of the foregoing, we find that petitioner forfeited her claim that the trial court improperly gave "substantial consideration" to respondent's valuation testimony. Forfeiture notwithstanding, however, the record simply does not support petitioner's claim.

¶ 96 2. Maintenance

¶ 97 Next, petitioner argues that the trial court erred in setting the amount of respondent's maintenance obligation. The trial court awarded petitioner permanent maintenance in the amount of $12,000 per month or $144,000 per year. Petitioner notes, however, the evidence at trial demonstrated that respondent earned close to $1.5 million in 2015 and 2016. According to petitioner, the trial court failed to consider respondent's gross income, thereby failing to properly apply section 504 of the Act (750 ILCS 5/504 (West 2016)). We disagree.

¶ 98 A trial court's award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). As such, a maintenance award will be reversed on appeal only if the trial court abuses its discretion. *In re Marriage of Cole*, 2016 IL App (5th) 150224, ¶ 10. An abuse of discretion occurs only where the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *In re Marriage of Johnson*, 2016 IL App (5th) 140479, ¶ 93. The party claiming an abuse of discretion in the denial of an award of maintenance bears the burden of showing the trial court abused its discretion. *Nord*, 402 Ill. App. 3d at 292.

¶ 99 Maintenance awards are governed by section 504 of the Act (750 ILCS 5/504 (West 2016)). Under the Act, where the parties' combined gross annual income is less than $250,000 and the payor spouse has no obligation to pay child support or maintenance from a prior relationship, the amount and duration of maintenance is established according to statutory guidelines. 750 ILCS 5/504(b-1) (West 2016).[3] However, where the parties' combined gross

[3] Section 504(b-1) has since been amended to provide that the statutory guidelines apply in situations when the combined gross annual income of the parties is less than $500,000. See P.A. 100-520, § 15, eff. Jan. 1, 2018 (amending 750 ILCS 5/504(b-1) (West 2016)).

annual income is greater than $250,000, the trial court may impose a non-guidelines award of maintenance after consideration of the relevant statutory factors in section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)). 750 ILCS 5/504(b-1), (b-2) (West 2016). The Act requires the trial court to make specific findings of fact "stat[ing] its reasoning for awarding or not awarding maintenance and *** includ[ing] references to each relevant factor set forth in [section 504(a)]." 750 ILCS 5/504(b-2)(1) (West 2016).

¶ 100 In this case, there is no dispute that the parties' combined gross annual income was more than $250,000. Thus, the statutory guidelines did not apply, and the court could award maintenance after consideration of all relevant factors in section 504(a) of the Act (750 ILCS 5/504(b-1)(2) (West 2016)). The trial court complied with this mandate. Significantly, in awarding maintenance, the trial court clearly considered all relevant section 504(a) factors. For instance, the court noted that the parties' marriage was long term, lasting in excess of 20 years. 750 ILCS 5/504(a)(8) (West 2016). The court also noted that while each party possessed significant assets (750 ILCS 5/504(a)(1) (West 2016)), respondent had a "substantially greater" realistic present and future earning capacity (750 ILCS 5/504(a)(3) (West 2016)) because petitioner's education was limited to high school, she was 61 years of age at the time of the dissolution, and the vast majority of her prior employment was with Littlestar. Further, the court determined that petitioner did not incur any impairment of her earning capacity due to domestic duties or having foregone or delayed education, training, employment or other opportunities during the marriage (750 ILCS 5/504(a)(4) (West 2016)) and that there was no "impairment of the realistic present or future earning capacity" of respondent (750 ILCS 5/504(a)(5) (West 2016)). The court also found that the parties established a "high" standard of living during the marriage (750 ILCS 5/504(a)(7) (West 2016)) and that almost all of their needs were being met

(750 ILCS 5/504(a)(2) (West 2016)). The court also commented that petitioner is entitled to a "relatively small" Social Security benefit (750 ILCS 5/504(a)(10) (West 2016)), that petitioner did not contribute to respondent's education, training, or licensing (750 ILCS 5/504(a)(12) (West 2016)), and that there was no agreement between the parties (750 ILCS 5/504(a)(13) (West 2016)). Finally, the court mentioned the tax consequences (750 ILCS 5/504(a)(11) (West 2016)), noting that although the parties presented "completely different postures," neither party presented the opinion of a tax expert. Given these findings, we cannot say that the trial court's ruling is arbitrary, fanciful, or unreasonable, or that no reasonable person would take the view adopted by the court.

¶ 101 In so holding, we find that petitioner's claim that the trial court failed to consider respondent's gross income is without merit. At its verbal decision on financial issues, the trial court expressly stated that it reviewed multiple exhibits, including "[Petitioner's] 1 through 39." Among these exhibits were respondent's 2015 federal income tax return which reported gross wages of $1.568 million (Petitioner's Exhibit No. 35), respondent's November 17, 2016, financial affidavit which reflected year-to-date gross income of $1.537 million (Petitioner's Exhibit No. 17), and the parties joint tax returns for the years 2010 through 2014. The court also referenced the written closing argument petitioner filed with the court which discussed respondent's income. Petitioner complains that the court did not make any findings of fact as to respondent's annual gross income for purposes of determining maintenance, but petitioner cites no statutory or other authority requiring the trial court to expressly make such a finding when a non-guidelines award of maintenance is awarded. *Cf.* 750 ILCS 5/504(a)(b-1)(1)(A) (providing that in calculating an award under the statutory guidelines, the court begins by taking 30% of the payor's gross annual income).

¶ 102 Petitioner also claims that the trial court somehow failed to comply with section 504(b-3) of the Act (750 ILCS 5/504(b-3) (West 2016)). This provision states that for purposes of section 504, the term "gross income" means "all income from all sources, within the scope of that phrase in Section 505 of this Act." 750 ILCS 5/504(b-3) (West 2016). According to petitioner, this provision creates the rebuttable presumption that all income is income for support purposes unless specifically excluded by statute. See *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 280 (2006). Thus, she asserts, "for purposes of calculating maintenance, [respondent's] gross income is rebuttably what is reported on his federal income tax return." However, petitioner does not explain how the court failed to comply with this provision, thereby forfeiting this claim. *Kane*, 2016 IL App (2d) 150774, ¶ 32. In any event, as explained above, the trial court was keenly aware of respondent's income.

¶ 103 3. Division of Marital Estate

¶ 104 Finally, petitioner argues that notwithstanding the award of permanent maintenance, the trial court erred by failing to award her more than 50% of the marital estate. According to petitioner, she was entitled to a disproportionate share of the marital estate, particularly given respondent's future earning capacity at Littlestar and the retention of his personal goodwill valued at $2.06 million. In support of her position, petitioner cites *Heroy*, 385 Ill. App. 3d 640, for the proposition that the Act "in no way precludes the trial court from awarding both permanent maintenance and a disproportionate share of the marital estate." We find petitioner's argument unpersuasive.

¶ 105 Petitioner correctly notes that a trial court can award maintenance and a disproportionate share of the assets to one party. See *Romano*, 2012 IL App (2d) 091339, ¶ 121 (noting that the touchstone of proper apportionment is whether it is equitable, but an equitable division does not

mean an equal division). However, she fails to persuasively argue why such a division is appropriate in this case. She merely suggests that respondent has a greater future earning capacity than she and notes that he will retain his personal goodwill which was valued at $2.06 million. However, the trial court considered these facts in dividing the marital estate. As noted above, in dividing the marital estate, the trial court expressly discussed the section 503(d) factors, including the length of the marriage, respondent's financial contributions to the marital estate, the parties' earning potential, the parties' ages, occupations, and vocational skills, the tax consequences, and whether the apportionment is in lieu of or in addition to maintenance. 750 ILCS 5/503(d) (West 2016). Thus, the trial court considered the facts cited by petitioner. Accordingly, based on the record before us, we cannot say that the trial court abused its discretion in its division of the marital estate.

¶ 106 Petitioner's reliance on *Heroy*, 385 Ill. App. 3d 640, does not compel a different result. In *Heroy*, the parties divorced after 26 years of marriage. Although both parties had law degrees and established careers at the time of the union, the wife quit her career as a law librarian after the birth of the second of the couple's three children. Thereafter, she devoted the majority of her time raising the couple's children and managing the household. The husband continued working throughout the marriage and was the primary wage earner for the family. The trial court awarded the wife permanent maintenance of $35,000 per month and 55% of the $8.7 million marital estate. Regarding the division of marital property, the reviewing court rejected the husband's argument that awarding the wife a larger share of the couple's marital estate constituted an abuse of discretion. While the court agreed that the husband made significant financial contributions to the parties' marital estate, it noted that the wife meaningfully contributed to the family unit. *Heroy*, 385 Ill. App. 3d at 661-62. For instance, the wife devoted

the majority of her time to raising the parties' three children and played an integral part in their educational and social lives. *Heroy*, 385 Ill. App. 3d at 662. Further, she contributed meaningfully as the husband's spouse by managing the household and socializing with his business associates. *Heroy*, 385 Ill. App. 3d at 662. The court also pointed out that at the time of the dissolution proceeding, the wife was 56 years old and had not worked full-time outside the home for approximately 20 years. Here, in contrast, petitioner and respondent had no children together. Nor was there evidence that petitioner gave up an established career to devote her time to managing the household or entertain respondent's business associates. Further, petitioner has not been out of the workforce for 20 years. For these reasons, *Heroy* is factually distinguishable.

¶ 107 III. CONCLUSION

¶ 108 For the reasons set forth above, we affirm the judgment of the circuit court of Boone County.

¶ 109 Affirmed.