NOTICE
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2026 IL App (5th) 241126-U

NO. 5-24-1126

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
DEBBIE GRANT,	)	Union County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 19-D-39
	)	
TODD GRANT,	)	Honorable
	)	Amanda Byassee Gott,
Respondent-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Boie and Bollinger concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court abused its discretion when it failed to follow the mandate to award an equitable split of marital assets and maintenance. The amount of the postjudgment award for attorney fees was an abuse of discretion.

¶ 2 The petitioner, Debbie Grant, appeals from the July 16, 2024, judgment for dissolution of marriage. Debbie argues that the circuit court abused its discretion by failing to follow the guidance provided in *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, and seeks an equitable division of marital property. The respondent, Todd Grant, separately appealed the July 16, 2024, decision. Todd argues that the circuit court failed to comply with the mandate and claims that the circuit court abused its discretion in awarding attorney fees to the petitioner on remand. We consolidated their appeals upon review. For the following reasons, we reverse and remand, with instructions.

¶ 3 I. BACKGROUND

¶ 4 Debbie, born June 30, 1963, and Todd, born April 6, 1962, married on December 31, 1994. Debbie filed a petition for dissolution of marriage on June 17, 2019. The circuit court held a two-day trial on November 15, 2021, and January 14, 2022, with a focus on the division of marital property and an award of maintenance. The circuit court issued a judgment for dissolution of marriage on February 15, 2022, and Debbie appealed that decision in *In re Marriage of Grant*, 2023 IL App (5th) 220291-U. We reversed the judgment of the circuit court and remanded for further proceedings. Because we addressed the factual background in the initial appeal, only the facts necessary to address this appeal are provided herein.

¶ 5 On remand, the parties were in disagreement on how to proceed. Debbie submitted a written submission which suggested "that all necessary data was included in the original record," and this data was sufficient for the circuit court to make findings "without any new testimony or data." Consequently, Debbie recommended that the circuit court order each litigant to prepare and file factual submissions in support of sections 503 and 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503, 504 (West 2024)), as directed in paragraph 42 of the Appellate Court Opinion. Todd, on the other hand, argued for an evidentiary hearing because the values assigned to the assets had changed since the initial trial. Todd submitted that these updated values would be easily attainable through stipulation or documentary evidence. The circuit court found that an evidentiary hearing must be held and ordered the parties to file statements of contested issues and any stipulations as to values, evidence or agreements.

¶ 6 Debbie filed a motion to reconsider the circuit court's decision to hold an evidentiary hearing and argued that no further evidence or discovery was needed and relied on section 503(h) of the Act (750 ILCS 5/503(h) (West 2024)).[1] The circuit court granted Debbie's motion, noting that Todd had not filed a response. Thereafter, a written judgment for dissolution for marriage was issued by the circuit court on July 16, 2024, without further evidence or argument by the parties.

¶ 7 *Judgment for Dissolution of Marriage – July 16, 2024*

¶ 8 The July 16, 2024, judgment for dissolution of marriage indicated that the circuit court considered the transcripts and evidence presented during the hearings held on November 15, 2021, and on January 14, 2022, and noted that the mandate had not specifically ordered a new trial. The circuit court found that both Todd and Debbie were 62 years old, and able bodied, in good health. Debbie had an associate's degree. Throughout the marriage, Debbie was a homemaker and stay-at-home mother, and she sporadically worked part time. After the parties separated, Debbie began working full time and earned $14 per hour. Todd had a college degree and was employed as an assistant professor, who worked nine months out of the year. Todd had taught extra classes in the past, which would cause his income to fluctuate. At the time of trial, Todd was only receiving his base pay salary.

¶ 9 The circuit court found that Todd owned nonmarital property. He was a shareholder in a family owned business, GHG, LLC, which owned land where a car dealership, owned by Todd's cousin, was located. In the past, Todd received $833 in monthly rental income from this business, but Todd was no longer receiving rental income. Todd valued this asset at $250,000 in a financial affidavit. The circuit court noted that it considered this nonmarital asset when determining the division of assets under section 503 of the Act (750 ILCS 5/503 (West 2024)) and in the award of maintenance under section 504 of the Act (750 ILCS 5/504 (West 2024)).

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[1]Section 503(h) of the Act directs, "Unless specifically directed by a reviewing court, or upon good cause shown, the court shall not on remand consider any increase or decrease in the value of any "marital" or "non-marital" property occurring since the assessment of such property at the original trial or hearing, but shall use only that assessment made at the original trial or hearing." 750 ILCS 5/503(h) (West 2024).

¶ 10 The circuit court determined that the parties had agreed to the division of a portion of the marital assets prior to trial, and that the distribution of personal property in Todd and Debbie's possession was equitable. The 2024 judgment included that the parties made an agreement as to the division of vehicles, which included that Todd would be awarded the Porsche Cayman and Debbie would be awarded $27,000 as an offset for that vehicle. The circuit court additionally determined that the parties had reached an agreement regarding an initial disbursement of proceeds from their marital home. Each party received $59,000 during the pendency of the case, and the circuit court awarded each party the balance of their bank accounts in their own names, without assigning a value to those accounts. No specific marital debts were addressed.

¶ 11 The circuit court included that it had considered applicable factors set forth in section 503(e) of the Act (750 ILCS 5/503(e) (West 2024)) when dividing the remaining marital assets. The circuit court acknowledged that the parties agreed that Debbie would receive maintenance due to the income disparity of the parties when considering an equitable distribution of the marital property. The remaining marital property was distributed as follows,

A. Each party received the savings and checking accounts in their name, and they were responsible for any debt or loans in their names;

B. The Fidelity IRA, (approximate value of $588,000), Fidelity Roth IRA (approximate value of $24,000), and the State Universities Retirement System (SURS-Voya) account (approximate value of $70,000) were to be equally divided. The total approximate value of the three accounts was $682,000.

C. The "liquid nonretirement fund" held in the Dodge and Cox Joint Tenancy Investment Account (approximate value $55,000) was divided 60/40. Debbie received $33,000 and Todd received $22,000 from this account.

D. The circuit court ordered that the remaining funds from the marital residence held in trust, totaling $119,216, be equitably distributed in a 60/40 split after $27,000 was provided to Debbie to offset the value of the Porsche Cayman that was awarded to Todd, and the disbursement of $3,000 for attorney fees and costs that was awarded Debbie.

¶ 12 The 2024 judgment of dissolution of marriage also addressed maintenance. The circuit court indicated that it had considered the factors set forth in section 504(a) of the Act (750 ILCS 5/504(a) (West 2024)) when awarding maintenance to Debbie, and that the parties had agreed that Debbie should receive maintenance due to the disparity of their incomes. In determining how to calculate maintenance, the circuit court considered the testimony of the financial expert, "to the extent it was relevant," noting that the financial expert testimony was "given what weight it was due given the nature of her report, the inaccurateness of some of the findings, and speculation in her report." The circuit court had also considered the financial expert's analysis of the division of property to be incorrect because the agreed-upon personal property division between the parties had not been taken into consideration.

¶ 13 The circuit court awarded Debbie maintenance and noted that it considered "the parties, their income, earning potential, [and] standard of living." The circuit court found that Todd earned "on average less than $63,000 per year gross from his employment," and Debbie earned approximately $32,000 annually. Todd's monthly gross income was determined to be $5,194, and the circuit court noted that it found it appropriate to "include some overload class pay, since he has periodically received it and may receive it again in the future." The circuit court set Debbie's gross income at $2,600 per month. Todd was ordered to pay Debbie $328 per month in maintenance, indefinitely. The rental income from the nonmarital property of $833 was excluded from this calculation because Todd had not received that income since 2020. However, the circuit court included that maintenance would automatically increase and be recalculated to include the $833 in rental income if Todd begins to receive payments.

¶ 14 The July 26, 2024, judgment of dissolution of marriage additionally included that the circuit court had considered whether the maintenance award should be secured by a life insurance policy and determined that there was no agreement by the parties on this issue. The circuit court determined it was not mandated to require that the maintenance award be secured by a life insurance policy and found it was unreasonable to require either party to pay for premiums for a private life insurance policy. Todd was not required to maintain a life insurance policy to secure maintenance.

¶ 15 *Postjudgment Motions*

¶ 16 On August 12, 2024, Debbie filed a motion to reconsider the July 16, 2024, judgment for dissolution of marriage. Debbie argued that the circuit court failed to follow the appellate court mandate to make an equitable division of the marital property while considering the interplay of spousal maintenance. Debbie noted that the circuit court did not permit arguments on how the evidence should be considered before entering its written judgment on remand and argued that, by not allowing argument on the facts, the parties were not allowed to address the maintenance guidelines.

¶ 17 Debbie's motion to reconsider addressed that the appellate court decision required the circuit court to consider the remainder of the assets from the initial distribution of the house sale proceeds. Debbie noted that although each party had taken a distribution of $59,000 from the sale of the marital home, she had $24,000 remaining and Todd had $50,000. No consideration had been given by the circuit court with regard to the monies spent by Debbie that caused depletion of her account. Debbie was also ordered to pay $8,000 in credit card debt and argued that this debt should have been considered marital in connection with section 503 of the Act. Debbie argued that the circuit court had not considered this marital debt or the disparity in these assets. Rather, the circuit court had only distributed the remainder of the proceeds held in trust for the sale of the marital home, which were divided 60/40 after certain agreed-upon amounts were paid to equalize other distributions of marital property.

¶ 18 Debbie's motion to reconsider included calculations showing that Todd received more than 50% of the marital assets. Debbie argued that the circuit court should have applied a 60/40 split to the other assets subject to division, claiming that the 2024 judgment was "far from equitable."

¶ 19 Debbie addressed the maintenance award and argued that the circuit court should have awarded a non-guideline permanent award of spousal maintenance, along with a 60/40 split of all of the parties' marital assets. She provided calculations for three different amounts of maintenance and proposed that a non-guideline monthly spousal maintenance figure should be set at either $1,106.80 or $1,126.16 a month. She also argued that the circuit court had not explained its calculation of a gross income of $5,194 per month for Todd, which was contrary to the instructions in the mandate. Debbie requested that the circuit court reconsider its judgment and apply a 65/35 split of marital assets without maintenance, or a 60/40 split of marital assets with a recalculated spousal maintenance award.

¶ 20 Debbie additionally filed a motion for attorney fees requesting that Todd contribute $22,367 for costs and attorney fees incurred by Debbie after the entry of the judgment for dissolution and through December 13, 2023, and anticipated attorney fees after remand, for a total of $29,417. Todd subsequently filed a response requesting that the circuit court deny Debbie's request for attorney fees.

¶ 21 The circuit court entered an order on August 13, 2024, addressing Debbie's motion for post judgment attorney fees. The circuit court found that the fees charged on appeal were not reasonable and customary for Union County or for southern Illinois. Attorney fees totaling $7,500 and costs of $2,414.50 were found to be reasonable where Debbie had prevailed on appeal. Todd was ordered to pay $6,000 in attorney fees and costs to Debbie.

¶ 22 Todd filed a motion to reconsider the award of $6,000 in attorney fees and costs. He argued that Debbie failed to meet her burden of proving Debbie was unable to pay, and Todd was able to pay attorney fees. Debbie responded that the circuit court was aware of the parties' "relative financial circumstances" when it issued its order for attorney fees because attorney fees were awarded after the judgment for dissolution of marriage.

¶ 23 The circuit court held a hearing on September 20, 2024, on the pending motions. The circuit court first addressed Debbie's motion to reconsider the July 16, 2024, judgment for dissolution of marriage. Debbie relied on her written motion and indicated that the motion included three different calculations for maintenance supported by exhibits. Debbie also explained that she provided different calculations because she had not been allowed to present her argument that the circuit court should "depart from the guidelines and award spousal maintenance based on other factors in this case" prior to the issuance of the 2024 judgment.

¶ 24 Todd responded that Debbie's calculations were "incredibly wrong." Todd additionally argued that the circuit court complied with the mandate of the appellate court where the circuit court considered the elements for maintenance and adequately calculated the division of marital property.

¶ 25 Debbie's counsel responded by reading from *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, and stating the following,

> “The order did not include the actual net annual income used by the court or an explanation of its calculation. It also appears that the circuit court attempted to cap the maintenance award using the 40% amount at $328 per month in accordance with the guidelines, although, the circuit court could have deviated from the guidelines if it thought the valuations merited such an approach.” *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, ¶ 39.

Debbie continued to argue that the circuit court did not provide enough detail in the July 16, 2024, judgment for the maintenance calculation. She further claimed that the mandate required an equitable division with or without spousal maintenance, and that the judgment issued by the circuit court must provide a “meaningful amount of detail to show the process.”

¶ 26 The circuit court indicated that it had considered the factors in sections 503 and 504 in making its decision and noted that the exhibits and some of the arguments made by Debbie in the motion to reconsider had not been made during trial. The circuit court pointed out that Debbie did not believe that further evidence was necessary on remand and because no further evidence was allowed, the circuit court determined that no further argument was necessary. The circuit court indicated that it based its judgment on the directive of the appellate court using the information provided and denied the motion to reconsider the judgment of dissolution of marriage.

¶ 27 The circuit court then turned to the motion to reconsider the attorney fees award. Todd argued that Debbie had not demonstrated an inability to pay attorney fees. No financial affidavit or any information to show her lack of sufficient funds had been filed. Debbie relied on her written response.

¶ 28 The circuit court considered that the “inability to pay” did not require that Debbie had to have “no money.” The circuit court had significant evidence regarding the income of the parties, as well as their assets, and the division of property, and found that “it’s very clear” that Todd made more money than Debbie. Also, the circuit court highlighted that it had gone through, in great length, “its analysis with regard to maintenance factors and equitable division of property as to all of those issues that pertain to and are relevant to the party's finances, income, ability to pay, etc." Additionally, the circuit court noted that the award of fees granted was significantly less than the amount requested. The motion to reconsider the attorney fees award was denied.

¶ 29 Debbie appealed the July 16, 2024, judgment and the denial of her posttrial motion. Todd also filed a notice of appeal regarding the attorney fees awarded in the July 16, 2024, judgment, and the denial of his motion to reconsider. Because the facts regarding these parties are so integrated for our consideration, we have consolidated the appeals for disposition.

¶ 30 II. ANALYSIS

¶ 31 On appeal, Debbie argues that the circuit court abused its discretion by failing to follow the guidance in *In re Marriage of Grant*, 2023 IL App (5th) 220291-U. We also address Todd's argument on appeal that the circuit court erred in awarding attorney fees to Debbie.

¶ 32 According to the Act, "[t]he court shall make specific factual findings as to its classification of assets as marital or non-marital property, values, and other factual findings supporting its property award." 750 ILCS 5/503(a) (West 2024). The failure of a circuit court to determine the value of substantial assets can justify reversal. *In re Marriage of Rosen*, 126 Ill. App. 3d 766, 777 (1984). The valuation of marital property will not be reversed unless it is against the manifest weight of the evidence, and the division of marital property will not be disturbed absent an abuse of discretion. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). "A decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent or where the trial court's findings are unreasonable, arbitrary, and not based on the evidence." *In re Marriage of Johnson*, 2016 IL App (5th) 140479, ¶ 75.

¶ 33 The Act requires an equitable distribution of assets, not necessarily equal, as the circuit court is required to divide marital property in "just proportions." *In re Marriage of Smith*, 2012 IL

App (2d) 110522, ¶ 70. An unequal division of marital property may be appropriate based on the circumstances of the case. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 661 (2008). Section 503(d) of the Act (750 ILCS 5/503(d) (West 2024)) requires the circuit court to consider statutory factors when determining marital property division. See 750 ILCS 5/503(d)(1)-(12) (West 2024). A circuit court's determination of the distribution of marital property and amount of maintenance are reviewed for an abuse of discretion. *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 34.

¶ 34 The mandate of an appellate court is its judgment which vests the circuit court with authority to take action that conforms with the mandate. *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152 (2002). A circuit court has "no authority to act beyond the scope of the mandate and must follow the specific directions of the appellate court's mandate to the letter to insure that its order or decree is in accord with the decision of the appellate court." *In re Marriage of Ludwinski*, 329 Ill. App. 3d at 1152. The circuit court is required to "examine the appellate court's opinion and exercise its discretion in determining what further proceedings would be consistent with the opinion on remand." *In re Marriage of Ludwinski*, 329 Ill. App. 3d at 1153.

¶ 35 In *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, we found that the circuit court's inequitable apportionment of property was an abuse of discretion, and we remanded the case to the circuit court to determine an equitable distribution of the marital estate. The circuit court was additionally required to consider whether to award maintenance or provide an increased split of the marital assets in lieu of maintenance. If the circuit court awarded maintenance, then the circuit court was required to make appropriate findings, including findings regarding the life insurance policy to secure the maintenance payments.

¶ 36 In concluding that the circuit court's first judgment inequitably divided the marital estate, we found that the circuit court failed to make specific findings regarding the value of marital property. *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, ¶ 30. The marital home was unencumbered and sold for approximately $240,000, while the parties were separated. Each spouse agreed to a partial marital distribution of $59,000 to be paid into their separate bank accounts, and the remaining $119,216 was held in a trust. In the 2022 judgment for dissolution of marriage, the circuit court failed to address the issue of the disparity of the proceeds held in the parties' bank accounts, even though evidence was presented that Debbie had $24,000 remaining in her account and Todd had $50,000 remaining in his separate account. We previously found that "during the trial, the circuit court acknowledged that it had not previously addressed the issue of the division of those proceeds." *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, ¶ 30. We also found that "the property division left Debbie with less than 50% of the marital assets where the circuit court did not assign a value to the marital property from the sale of their home remaining in the parties' bank accounts." *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, ¶ 33. In our prior disposition, we also found that the circuit court failed to consider Todd's nonmarital property, his interest as a minority shareholder in GHG, LLC, valued at $250,000. *In re Marriage of Grant*, 2023 IL App (5th) 220291-U, ¶ 29.

¶ 37 Upon remand, the values of these assets were not updated, no testimony was taken, and no argument was provided by the parties prior to the entry of the July 16, 2024, judgment for dissolution of marriage. The July 16, 2024, judgment included consideration of the initial gross $59,000 disbursement to each party from the sale of the marital home but did not address the value remaining in the parties' respective bank accounts. Debbie's account had been substantially depleted based upon the costs expended for expert witness and attorney fees. These were expenses she had anticipated recouping, at least in part, based upon her petition for a fee award. The parties were also awarded the balances in their checking and savings accounts and were responsible for any debt or loans in their name. The $8,000 credit card debt identified in the initial appeal was not addressed. The 2024 judgment additionally included that Todd received nonmarital property valued at $250,000. No explanation was offered by the circuit court regarding consideration of that asset in relation to distributing the marital estate.

¶ 38 The values applied to the marital estate in the 2024 judgment were from 2021, and consisted of Fidelity Investments ($587,808.41), Fidelity Roth IRA ($23,595.37), Dodge & Cox funds ($55,000.17), SURS-Voya ($69,684.05) (collectively, the marital accounts), and the funds remaining from the sale of the marital home in trust ($119,000). The circuit court only applied a 60/40 split to the Dodge & Cox funds, and the remainder of the balance held in trust for the marital home after offsets. In its judgment, the circuit court continued to apply a 50/50 split to the other accounts (total value of $681,084.83).

¶ 39 Based upon the evidence in this record, with which we have great familiarity, we find, under the circumstances and after application of the section 503(d) factors, that the division of assets allocated in the July 16, 2024, judgment was inequitable and unjust to Debbie. The circuit court failed to follow this court's mandate where there was no allocation that included Todd's nonmarital asset, the value of funds in their respective checking and savings accounts after the initial disbursement of proceeds from the sale of the marital home, or the marital debt. We therefore find that the circuit court abused its discretion in its award of the marital estate where only a small portion of the marital estate was split 60/40. In consideration of the foregoing, we find that the circuit court should have applied at least a 60/40 split to all of the marital accounts in addition to any consideration of the amount of the permanent maintenance award.

¶ 40 This is the second time the parties have appeared before this court. The notice of appeal was filed on October 24, 2024, almost two years ago. The parties requested multiple extensions of time to prepare their briefs. The parties waived oral argument, and this case is ready for disposition. Because of the history of this case, and in the interest of judicial economy, we choose to invoke the authority granted to this court pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) to "enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a judgment, that the case may require."

¶ 41 Therefore, in order to assist the circuit court in the entry of its final judgment, we find that the circuit court's July 16, 2024, order allowing the division of property as agreed to by the parties in paragraph 9A, B, and C of its July 2024 order was equitable and not an abuse of discretion, as was that portion of paragraph 9D, which ordered that Debbie and Todd shall retain as their sole property their respective bank accounts and any monies therein. On remand, the circuit court shall enter a final judgment of dissolution that includes these allocations to the parties, verbatim, once again.

Further, the July 16, 2024, judgment states the circuit court considered the factors pursuant to "750 ILCS 5/503(e)," and lists those factors considered. We are confident that the circuit court made a scrivener's error when it referred to section 503(e), as the factors are actually found in section 503(d) of the Act. Further, the circuit court stated the following consideration when making its award of the marital funds:

> "While the court is to equitably distribute property between the parties, taking into consideration that income disparity and earning potential, maintenance in great part helps to address that disparity. It is not the role of the courts to ensure that the parties after a dissolution continue to earn the same or accumulate the same wealth. Court does

> however, consider in this case that the maintenance award in and of itself does not equalize the income of the parties."

Relying on this perspective, the circuit court divided all of the marital accounts on a 50%-50% basis, except the Dodge and Cox funds. Based upon the record before the circuit court and taking into consideration the factors found in section 503(d) of the Act, we find the circuit court abused its discretion when it applied those factors and failed to award Debbie more than 50% of the marital accounts (except for the Dodge and Cox funds). Our finding is based on the calculation which results from the circuit court's award of 60% of the Dodge and Cox funds to Debbie (and the 50% the court applied to the more substantial investment accounts). The circuit court valued the Dodge and Cox account at approximately $55,000. The difference between an award of 60% ($33,000) and 50% ($27,500) was $5,500. In the circuit court's view, this is the amount of money that would be added to Debbie's marital estate, "due to the disparity in income and earning potential of the parties and considering the award of maintenance does not quite equal out the parties' incomes." The circuit court also noted that it was relying on the other, agreed-to divisions of property between the parties, but other than the Porsche, which is a credit, there is no indication in the circuit court's order regarding the overall valuation of that division between the parties. To use this amount of $5,500, in conjunction with a $328 per month award of maintenance, considering the disparity in income earning potential, the length of the marriage, and all of the other statutory factors, we find that the circuit court's division of the marital funds was inadequate and unjust to Debbie and an abuse of discretion.

¶ 42 Our conclusion is based on the circuit court having glossed over the factors, without making any specific findings, such as the fact that Todd was employed as the general manager in his family's car dealership business for the majority of the 25-year marriage. There was no discussion regarding the standard of living enjoyed by the parties during the marriage. Todd testified during the first trial that in 2014, he inherited a 1/9th ownership interest of GHG, LLC, which owned 20 acres of unimproved land and an additional 7 acres of property where an auto dealership, Landmark Automotive, was located. Todd further testified that his 1/9th interest in GHG, LLC was valued at $250,000.[2] His interest in GHG, LLC was considered a nonmarital asset. The circuit court on remand, accepted Todd's prior valuation of the remaining interest he held in the family business or property at $250,000 without any consideration of his 2022 income tax returns which show an ownership interest in GHG, LLC and, potentially, GHG Farms, LLC. Because the parties have not fully developed Todd's interests in these nonmarital assets, we consider only the $250,000 nonmarital asset.

¶ 43 Additionally, Todd had been paid an additional $833 per month from the Landmark automobile dealership for rental of the seven acres of land where the dealership was located. When Debbie filed for divorce in June of 2019, the payments from Todd's family business stopped shortly thereafter. Todd testified that the failure to pay the rental income was due to the decreased sales of the dealership as a result of the pandemic, although no payments have resumed since that health epidemic ended. With regard to the length of the marriage, and the relative contributions to the marriage, the record reveals that Todd and Debbie were married in Hawaii in December 1994 where Debbie was raised and still has family. Todd and Debbie moved to Illinois in 1996, just two years after their marriage so that Todd could become a general manager with the family's auto dealership. In 2007, Debbie and Todd returned to Hawaii, where Todd became employed as a general manager for a car dealership. The parties remained in Hawaii for two years and then returned to the family dealership business, Landmark. Meanwhile, as Todd's career in the

[2]Todd's financial affidavit, filed September 16, 2019, listed a business interest of 10% in Landmark Chevy valued at $250,000.

automobile industry was flourishing, Debbie was a stay-at-home mom who raised the children and otherwise maintained the household. She was able to take classes on an occasional basis and earned her associate's degree from Lincoln Land Community College. Todd took a position with Southern Illinois University Carbondale (SIU-C) in 2017 that paid far less money than he was earning in the family business. Todd retained his interest in the family business to some extent, as he retained a nonmarital interest valued at $250,000 and was paid $833 dollars a month in rental income until shortly after Debbie filed for a divorce. During the marriage, the parties acquired a marital residence, valued at $240,000, and saved a substantial amount of money, as reflected by the marital accounts. The parties entered into an agreement to divide certain marital assets, such as automobiles and bank accounts in their possession as of the date of the original hearing.

¶ 44 "Marital property must be divided in "just proportions" in light of the relevant circumstances of the parties." *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 338 (1999) (citing 750 ILCS 5/503(d) (West 1996)). "Just proportions does not necessarily mean mathematical equality; rather, the distribution must be equitable under the circumstances." *In re Marriage of Brackett*, 309 Ill. App. 3d at 338. Here, the circuit court gave lip service to the disparity in income and stated that the maintenance award "in great part helps to address that disparity." The appellate court in *In re Marriage of Brackett*, summarized the purpose of an equitable division of marital property as follows,

> "Though it is generally recognized that the distribution of marital property is interrelated with maintenance (see 750 ILCS 5/504(a)(1) (West 1996)), the purpose of the Act is to make the division of marital property the primary means of providing for the future financial needs of the parties. [Citations.] Thus, the Act implicitly provides for an award of property in lieu of maintenance (750 ILCS 5/503(d)(10) (West 1996)), *but it does not provide for an award of maintenance in lieu of property*." (Emphasis added.) *Marriage of Brackett*, 309 Ill. App. 3d at 338.

Based upon our review of the factors, as particularly described above, we reiterate that the circuit court's allocation of marital property and reliance on $328 per month in maintenance was an inequitable division of the marital property, and we hold that the circuit court abused its discretion in allocating the marital property and marital accounts.

¶ 45 Considering all of the facts set forth herein, the statutory factors, and the purpose of an equitable property division, we find that a fair and reasonable distribution of the marital accounts results in an award to Debbie of 60% of the total updated marital accounts as they are valued as of the date of this court's mandate or until this order is otherwise final. Todd shall be entitled to 40% of the total updated marital accounts. The circuit court is directed to enter a judgment setting forth this allocation. As previously ordered by the circuit court, the judgment should require that the parties shall execute any and all documents necessary to effectuate the terms of the circuit court's judgment, and include, "Any necessary QILDROS or QDROS shall be prepared by Todd and shall include that Debbie's portion as alternate payee shall be subject to post retirement increases, shall receive 60% of any refund on termination or lump sum retirement benefit, shall receive 60% of any partial refund available to the member and 60% of any death benefit of the member to the alternate payee."

¶ 46 Further, Debbie shall be entitled to 60% of the sale price ($240,000) of the marital home, or approximately $144,000. This would include the $59,000 Debbie has already received as an interim distribution. This means Todd's 40% allocation ($96,000) also includes the initial distribution of $59,000.[3] After deduction of the $59,000 from Todd's distribution, Todd's remainder is $37,000. From that amount, Todd shall pay Debbie the $27,000 credit for the Porsche,

[3]To the extent there is any accumulated interest earned on the monies being held in escrow during the course of these appeals, those remaining funds shall also be divided 60% to Debbie and 40% to Todd.

the $3,000 previously awarded in attorney fees, and one-half of the credit card debt ($4,000). The circuit court is directed to include all of the foregoing allocations in its final judgment of dissolution.

¶ 47 We turn now to the circuit court's award of maintenance. We agree with the circuit court that Debbie shall be entitled to a lifetime maintenance award. Our prior disposition, however, directed the circuit court to reconsider its award of maintenance. The circuit court indicated it had reviewed its prior judgment and ultimately made no change in the amount of the maintenance award payable to Debbie. The circuit court found Debbie was in good health and had an associate's degree from Lincoln Land Community College. Shortly after separating from Todd, Debbie became employed as an hourly employee earning $14 per hour (plus overtime) for Addus HomeCare on a full-time basis. Todd was also found to be in good health and had a college degree and some post-graduate work from SIU-C. At the time of the original trial, Todd was employed by SIU-C as an assistant professor in its Automotive Technology program. Todd's average gross monthly income was paid by SIU-C for nine months of work but calculated for payment over 12 months. On remand, the circuit court used its original determination, that Todd earned $5,194 per month. This award was based on a blended earning potential, which we previously found was not against the manifest weight of the evidence. This calculation did not take into consideration the additional income Todd may receive from his interest in the family business valued at $250,000 and the $833 per month he had previously received. Debbie's annual income was estimated at $2,600 per month and was based on a 12-month earning cycle. The circuit court's July 16, 2024, order then indicates, "Standardized net income calculations are applied as specified under section 505 of the Act (750 ILCS 5/505 (West 2024)) and utilizing the Illinois Child Support calculator at the time of this original decision." Based upon that calculation, the circuit court found, once again, that Debbie was entitled to a monthly maintenance award of $328 per month. The judgment further required that the parties exchange tax return information annually, and in the event that Todd began receiving the $833 per month, the maintenance would "automatically increase." The court did not, however, include a method for calculating the increased maintenance that would have allowed that provision to be self-executing.

¶ 48 The circuit court's 2024 judgment awarded the same amount of maintenance as in its 2022 judgment, even though the circuit court made some findings on remand pursuant to 750 ILCS 5/504(a). The court's 2024 judgment indicated, generally, that factors "1, 2, 3, 4, 5, 7, 8, 9, and 10" had been considered "to be the most relevant" for the determination of maintenance. Almost every factor identified by the statute was not specifically discussed by the circuit court. The overall discussion regarding the award of maintenance was general and did not specifically consider the many factors the circuit court listed in its July 16, 2024, order. For example, even though the circuit court acknowledged Debbie's inability to earn, no effort was undertaken to determine how Debbie's occupation, age, and hourly income directly affected Debbie's ability to support herself through appropriate employment and, enjoy the standard of living which she had enjoyed during the marriage. The circuit court concluded that a 50/50 split of the marital accounts, sale of the marital residence, and an award of an extra $5,500 to Debbie, was a sufficient allocation of marital property to justify the award of statutory lifetime maintenance in the amount of $328 per month. No effort was made to determine the realistic needs of the parties. The circuit court recognized that Debbie's occupation and hourly wage created a significant income disparity between Debbie and Todd, but the court indicated that it was not the guarantor that the parties would earn the same in the future. The circuit court gave its view on the award of marital property and maintenance, stating,

> "It is only logical that a spouse who earned more money during the marriage, will continue to earn more money after the marriage, and thereby may as a result continue to acquire more assets. While the court is to equitably distribute property between the parties, taking into consideration that income disparity and earning potential, maintenance in great part helps to address that disparity. It is not the role of the courts to ensure that the parties after a dissolution continue to earn the same income or accumulate the same wealth."

Based upon this perspective, the circuit court determined that $328 per month was sufficient. Consideration should have been given, however, to the fact that Debbie was earning far less than Todd, in a much more strenuous occupation than Todd. Debbie's future earning capacity was nowhere comparable to Todd, who still maintained an interest in the family business, although it is not clear how much beyond the $250,000 value assigned to the property owned.

¶ 49 The investment income that could be realized from the $250,000, using a 4% return of simple interest would yield Todd an additional $833 per month—the same amount that Todd lost when his cousin stopped making the rental income payments to GHG, LLC. This court takes notice that the Bank of Herrin was offering 4% on a 12 month CD. (https://www.bankofherrin.bank/resources/current-rates) (last visited Sept. 1, 2026). According to this website, the annualized yield would actually be 4.1% for a monthly income to Todd of $854 per month. We may take judicial notice of "readily verifiable facts if doing so will aid in the efficient disposition of a case." (Internal quotation marks omitted.) *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37. We, therefore, find that consideration of a 4% interest rate is reasonable.

¶ 50 The realistic and present earning capacity was not considered in these kinds of economic realities. In fact, without any evidence to support such a finding, the circuit court speculated that Todd may pay off the student loans for one of his children, simply because the parties, while married, did so for their other child. The circuit court seemed to accept this fact as true, which caused the court to leave Todd with sufficient assets to do so, but lowered his ability to pay an award of maintenance beyond the statutory guidelines.

¶ 51 In its July 2024 judgment, the circuit court speculated that, "Both parties may retire in a short number of years and at that time, they will both be living off of the same pension, retirement assets and social security benefits." Todd was able to maintain his nonmarital interest of $250,000, without further consideration regarding how income from this investment affected the present and future earning capacity of Todd. In our view, the circuit court failed to make the specific findings we have iterated herein. Consideration should have been given to the nonmarital asset that Todd had in GHD, LLC. Because Debbie was in her 60s, there was no time for her to "catch up" to the earning capacity Todd had accomplished while Debbie raised the children and maintained the household. Debbie was entitled to an award of lifetime maintenance based on the length of the marriage and her contribution to that 25-year partnership.

¶ 52 " 'The optimal goal of maintenance is to create financial independence for the dependent former spouse.' " *In re Marriage of Bostrom*, 2022 IL App (1st) 200967, ¶ 58 (quoting *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 384 (2009)). Permanent maintenance is commonly granted where the marriage was lengthy, and the parties have grossly disparate earning potentials. *In re Marriage of Wojcik*, 2018 IL App (1st) 170625, ¶ 30. "A spouse should not be required to lower the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet his needs and the needs of his former spouse." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008).

¶ 53 Therefore, having now considered the factors set forth in section 504(a) of the Act, we find that the circuit court's award of $328 per month to Debbie was inadequate, unjust, and an abuse of discretion. See 750 ILCS 5/504(a) (2024). Although the factors probably justify a deviation upward from the maintenance guidelines, we choose not to do so, as there are sufficient variables not considered by the circuit court that will result in a more equitable distribution to Debbie. Specifically, we find that Debbie's income, like Todd's, should be annualized on a nine-month basis. The circuit court found that Debbie's monthly income was $2,699 per month. Over a 12 month period, that equals $31,200. We now deduct three times $2,600 from $31,200, which totals $23,400—the amount Debbie earns over nine months. This amount, divided by 12 months, results in a monthly income, for purposes of the maintenance calculation, of $1,950 per month.

¶ 54 Additionally, we must take into account Todd's interest in the $250,000 nonmarital asset and its overall value. As previously noted, this asset has an income-producing capability of at least $833 per month. Coincidentally, this is the same amount that Todd received on a per month basis when Landmark was paying its rent. Therefore, we cannot ignore the value of this asset and conclude that Todd's income should reflect an increase in his annual net income of $833 that could be earned off of the investment of the nonmarital property.[4] We find that a fair allocation of this benefit is 50% toward his net annual income, thus resulting in an additur of $416.50 to the $5,194 income previously determined for Todd, for a total of $5,610.50 net annual income per month for Todd. Using the standardized guidelines, allocating these revised amounts for the parties, results in a $1,074.20 a month maintenance award to Debbie. Based upon our consideration of the factors set forth in section 504(a) of the Act, as discussed herein, and the relative division of marital assets, we find that the award of maintenance in the amount of $1,074 is fair, reasonable, adequate and just. We direct the circuit court to enter a judgment awarding Debbie lifetime maintenance in this amount commencing on the first of every month after the entry of the final judgment of dissolution.

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[4]We arrive at the finding of net income based upon Todd's tax returns that show he is receiving deductions based upon his interest in GHG, LLC.

Further, the circuit court shall include in its judgment the provision that if Todd begins receiving the $833 per month in rental income, then the maintenance shall be increased by adding 50% of the amount received in rental income to Todd's net monthly income. The statutory formula for calculation of maintenance shall then be applied. Todd shall notify the circuit court within 30 days of receiving these additional amounts by filing a petition to modify the maintenance award that shall include a proposed order that sets forth the revised amount of maintenance due and owing. Debbie shall thereafter have 21 days to either accept or contest the revised maintenance award. If Debbie accepts the revised maintenance award, the circuit court shall enter the proposed order instanter, but in no event less than 30 days after Todd files the petition.

¶ 55 We next consider whether Todd should be required to maintain a life insurance policy to protect the award of maintenance. The record is not clear regarding the status of life insurance policies covering Todd and Debbie. There was evidence in the proceedings that Todd received a life insurance policy estimated by the circuit court at $50,000 through his employment at SIU-C. In a pleading filed by Debbie, she claimed that Todd has, "upon information and belief, *** a pre-existing health condition," but there are no specifics provided. That said, based upon the relative disparity of income, prior standard of living of the parties, length of the marriage and the fact that the award of maintenance is for Debbie's lifetime, we find the circuit court abused its discretion by failing to protect Debbie's award of maintenance. We find that there is no additional cost to either party for Todd to carry this insurance, and the amount is not great compared to the $500,000 policy Todd carried on himself. Therefore, the circuit court is directed to require that Todd name Debbie as the sole beneficiary of his employment life insurance policy through SIU-C which the circuit court estimated at $50,000. This provision shall remain in effect until such time as Debbie begins collecting social security retirement benefits. In the event the insurance policy is terminated, for whatever reason, Todd shall purchase a policy of equivalent value and make the premium payments thereon, until such time as Debbie begins collecting social security retirement benefits.

¶ 56 For all of the foregoing reasons, we find the circuit court abused its discretion in the July 16, 2024, judgment of dissolution. Therefore, we vacate the circuit court's judgment and remand with instructions to have the circuit court enter a judgment of dissolution that incorporates each and all of the directives set forth herein. To the extent the circuit court needs to add additional language that facilitates the exchange of documents, entries of consents or releases, or other paperwork necessary to carry out the judgment, the circuit court shall add such directives to the judgment to effectuate the smooth transition of the division of property, including the marital accounts. Similarly, the circuit court shall include directions regarding release of the marital funds from the sale of the house that are presently held in a trust account.

¶ 57 Having concluded that the circuit court abused its discretion in allocating the marital property, and in failing to award a just amount of maintenance, we reverse the July 16, 2024, judgment in its entirety. We remand with instructions as specifically set forth in this disposition.

¶ 58 We turn next to Todd's argument on appeal that the circuit court erred in its award of attorney fees after remand. In general, the party who incurred attorney fees is responsible for the payment of those fees. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007). Section 508(a) of the Act (750 ILCS 5/508 (West 2024)) allows the circuit court to order a party to pay a reasonable amount of the other party's attorney fees, based on the court's consideration of the financial resources of the parties. An award of fees after judgment "shall be based on the criteria for division of marital property" under section 503 of the Act, and the criteria for maintenance, if any is awarded. See 750 ILCS 5/503(j) (West 2024). This includes the parties' relative economic circumstances and ability to earn income in the future. 750 ILCS 5/503(d)(5) (West 2024).

¶ 59 To justify an award, the party seeking a contribution must establish that they lack the ability to pay their attorney fees and that the other party has the ability to pay. *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 99. "A party is unable to pay if, after consideration of all the relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *In re Marriage of Heroy*, 2017 IL 120205, ¶ 19. "Thus, it is clear the inability to pay standard was never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance." *In re Marriage of Heroy*, 2017 IL 120205, ¶ 19. The circuit court has discretion to award attorney fees and costs, and this decision will not be reversed, absent an abuse of discretion. *In re Marriage of Thomas*, 339 Ill. App. 3d 214, 224 (2003).

¶ 60 In determining whether the attorney fees charged are reasonable, the circuit court should consider, "(1) the number of hours the attorney spent, (2) the skill and standing of the attorneys, (3) the difficulty of the issues, (4) the amount and importance of the subject matter in the field of family law, (5) the degree of responsibility involved in the management of the case, (6) the usual and customary charge in the community, and (7) the benefits to the client." *In re Marriage of Andres*, 2021 IL App (2d) 191146, ¶ 79. The attorney seeking fees has the burden of proof to establish the value of his services. *In re Marriage of Andres*, 2021 IL App (2d) 191146, ¶ 79.

¶ 61 On March 11, 2024, Debbie's attorney filed a "Motion for Attorney Fees Pursuant to 750 ILCS 5/508(a)(3.1) and 750 ILCS 5/508(a)(1)." This motion included attorney time for all of the preparation of pleadings, court appearances, research, the two-day bench trial before the circuit court, preparation of a posttrial motion and the appeal, which raised a multitude of issues. Attached to the motion was a detailed affidavit regarding time spent on each of the various tasks undertaken and an itemized list of court costs in the amount of $2,415.50. The motion requested two forms of relief. The first request was that Todd pay the sum of $22,273 toward Debbie's attorney fees and costs incurred up through the date of filing. Debbie also requested that Todd contribute the sum of $7,050 toward attorney fees that Debbie was expected to incur going forward, as a result of this court's order of remand.[5] A hearing on the motion was held before the circuit court on June 14, 2024, and a written order was entered on August 13, 2024. Based upon this record and the representations made by the circuit court in its August 13, 2024, order we reverse the findings of the circuit court for an abuse of discretion and remand for further proceedings.

¶ 62 Preliminarily, we note, that this request for attorney fees was postjudgment. Therefore, as the circuit court recognized, "Contribution fee awards should be made in accordance with 503(j)." As previously noted, the statute requires any award of contribution of attorney fees from one party to the other party shall be based on the criteria for division of marital property under section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under section 504 of the Act. 750 ILCS 5/503(j)(2) (West 2024).

¶ 63 Although the circuit court made no specific findings regarding Debbie, as required by the statute, ultimately, Debbie was awarded the sum of $6,000 toward her attorney fees plus costs. There is simply no way to determine, on this record, how the circuit court arrived at this award of fees. We have already determined that the circuit court abused its discretion in allocating the marital property, marital accounts and award of maintenance. For example, the circuit court knew there was a significant disparity in income-producing capability and did not consider that Debbie only had remaining $24,000 in her account after receiving her distribution of $59,000. Todd had $50,000 remaining. Debbie indicated that a good part of the funds had gone to pay her attorney

[5]Prior to the filing of this motion, the circuit court, *sua sponte*, had entered an interim fee award for the amount of $3,000. Presumably, this award was pursuant to "Section 503j" for attorney time in preparation of the trial proceeding,

and an expert for this proceeding. Therefore, based upon the failure of the circuit court to provide findings pursuant to the statute, we must remand this issue to the circuit court, as the new judgment will require the circuit court to consider the factors through the lens of the new judgment. Further, during argument on this motion, Todd's counsel stated, "We have farmed out appellate work to different attorneys in the area over the last 15 to 18 years that I've been involved in this practice and we've never charged anybody more than $7,500 and I've never seen anybody in southern Illinois charge anybody more than $7,500 to do an appeal." This statement was argument, and was not competent evidence, and its relative value is a question for the circuit court upon remand. If, however, Todd, or his counsel, intend to object to the reasonableness of the $235 hourly fee charged by Debbie's counsel, then Todd's counsel shall produce, by affidavit, his itemized bill, showing his hourly attorney fee rate, the nature of the work performed, and the total paid by Todd as of the date the circuit court holds the evidentiary hearing. Should Debbie's counsel require this information in advance of the hearing, the circuit court shall order this financial information produced at least 10 business days prior to the evidentiary hearing scheduled on the motion. Debbie's counsel shall update his affidavit as well.

¶ 64 Additionally, on remand, the circuit court shall consider section 503 and section 504 factors in the context of the new judgment of dissolution to be issued. The circuit court should direct the parties to update their financial affidavits and include for the circuit court the total amounts spent on attorney fees. As the circuit court found before, Debbie's attorney is "entitled to contribution to her reasonable attorney fees and costs." Based upon the findings made by this court, the revised allocations have not changed that conclusion. Thus, on remand, the circuit court shall convene an evidentiary hearing on this motion for postjudgment attorney fees. Unlike the prior hearing, where the circuit court commented in its order[6] that there were no witnesses called, we agree with the circuit court that presentation of competent evidence "would have been more appropriate" where there was no agreement "as to the reasonableness of the attorney fees being requested. During the evidentiary hearing to determine the reasonableness of the hourly rate requested by Debbie's counsel, competent evidence shall be admitted, which includes the affidavit filed by Debbie's counsel. In that regard, we find that the circuit court abused its discretion by relying on its "experience as a family law practitioner for almost 20 years [who] handled several appeals prior to taking the bench." Similarly, the circuit court abused its discretion when it continued,

> "Based upon its experience on the bench the last six years and 20 years of practice as a family law practitioner prior to taking the bench, that requesting over $22,000 for the divorce (no children) appeal is not a reasonable and customary attorney fee in Union County or Southern Illinois."

The circuit court also concluded, without any explanation, that Debbie's counsel should not have filed a reply brief in her appeal. These comments, in addition to the personal opinions rendered upon review of the affidavit filed by Debbie's counsel, were an abuse of the trial court's discretion when it came to awarding a fair and reasonable attorney fee under statutes that are aimed at leveling the playing field.

¶ 65 III. CONCLUSION

¶ 66 For the foregoing reasons, we reverse the judgment of dissolution of marriage and the postjudgment attorney fee award, and remand these proceedings with instructions.

¶ 67 Reversed and remanded with instructions.

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[6]This is the fee award order filed August 13, 2024.