2014 IL App (2d) 130098-U
No. 2-13-0098
Order filed February 13, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF JAY BURSTEIN,	)	Appeal from the Circuit Court of DeKalb County.
Petitioner-Appellee,	)	
and	)	No. 07-D-238
GEORGETTE BURSTEIN,	)	Honorable William P. Brady,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment

ORDER

¶ 1 *Held*: The judgment of dissolution was affirmed in part and reversed in part where the trial court's classification of 42/83 of 14.62 UUC membership interests was against the manifest weight of the evidence; where the court's valuations of Jay's ownership interests in DCC and UUC were not against the manifest weight of the evidence; and where the court did not abuse its discretion in denying Georgette's motion to reopen proofs, in distributing the UUC membership interests, in deviating from the statutory guidelines in setting child support, or in denying Georgette's petition for contribution to attorney fees.

¶ 2 Respondent, Georgette Burstein, appeals from the trial court's judgment dissolving her marriage to petitioner, Jay Burstein, a urologist with ownership interests in DeKalb Clinic Chartered (DCC), DCP Properties, LLC (DCP), and United Urology Centers, LLC (UUC). Georgette challenges the trial court's valuations of Jay's ownership interests in DCC and UUC,

its classification as nonmarital property of a portion of the UUC membership interests[1] titled in Jay's name, its method of allocating the marital portion of the UUC membership interests between the parties, and its decision not to reopen proofs so that "proper" valuations of UUC, DCC, and DCP could be reached. She also argues that the trial court abused its discretion in setting child support below the statutory guideline at less than 10% of Jay's net income and in denying her petition for contribution to attorney fees without a hearing. For the following reasons, we affirm in part, reverse in part, and remand.

¶ 3 I. BACKGROUND

¶ 4 Georgette and Jay were married in April 1984. Georgette was a registered nurse but, at the time of trial, had not worked outside of the home since 1993. Georgette stayed home to raise the parties' two children, Josh and Michael. Josh was emancipated before Jay commenced divorce proceedings in August 2007.

¶ 5 A. Subpoenas to UUC, DCC, and DCP

¶ 6 Much of the pretrial litigation centered on Georgette's efforts to subpoena documents from UUC, DCC, and DCP[2] so that her retained expert witness, Joseph Modica, could value Jay's ownership interests in the entities. Georgette initially issued subpoenas to UUC and DCC in June 2008. She requested income tax returns, shareholder agreements, schedules of fixed assets, leases, annual financial statements, monthly or quarterly financial statements, loan

[1] The parties use the term "shares," but the UUC operating agreement uses the term "membership interests," so we will use that term. Further, Jay's certificate of ownership indicates that he is the owner of 14.62 class A membership interests.

[2] Georgette issued subpoenas to a number of other entities as well, but only UUC, DCC, and DCP are at issue on appeal.

transactions, business valuations, memorandums of intent, employment agreements with Jay, and credit card statements for accounts of which Jay was an authorized user. Both UUC and DCC moved to quash the subpoenas. On January 27, 2009, the court granted the motions to quash, finding the subpoenas overly broad, but opined that Georgette should be entitled to any documents to which Jay had access under the entities' shareholder or operating agreements.

¶ 7 Georgette issued narrower subpoenas to UUC and DCC in February 2009. She requested documents that Jay was entitled to receive, as well as documents concerning the sale of any members' interests from 2005 to 2009. DCC again filed a motion to quash, which the court denied. Both DCC and UUC complied with the subpoenas.

¶ 8 Georgette issued new subpoenas to UUC, DCC, and DCP in March 2010. At a hearing on Georgette's motion to extend discovery, she indicated that Modica, her expert, had discovered Jay's ownership interest in DCP while reviewing the documents that DCC had previously produced. On Jay's motion, the court quashed the subpoenas, because they were not returnable to the court, but it granted Georgette leave to issue new subpoenas, which she did in May 2010. She sought, among other documents, annual financial statements, federal and state income tax returns, general ledgers, lists of subsidiaries, fixed asset registers, accounts receivable and payable, inventory lists, schedules of officers' and directors' compensation, shareholder agreements, buy-sell agreements, major sale or purchase contracts, and board meeting minutes.

¶ 9 DCC and DCP moved to quash the subpoenas, while UUC responded to its subpoena with written objections. Georgette filed an affidavit from Modica in which he attested that he required the items requested in the subpoenas to value Jay's ownership interests. On November 8, 2010, the court denied DCC's and DCP's motions to quash, because it did not accept the entities' arguments that buyout agreements between Jay and the two entities were the only possible bases for valuing Jay's shares.

¶ 10 On November 30, 2010, a hearing was held on UUC's objections. The court ordered Georgette to file a supplemental affidavit from Modica explaining why he required the documents requested in the subpoena, which Georgette did. Following a hearing on December 22, 2010, the court ordered UUC to produce documents responsive to the following categories: general ledgers, list of subsidiaries, accounts receivable, fixed asset register, accounts payable, appraisals of specific assets, and details of any litigation. After further litigation over the subpoenas, DCC, DCP, and UUC ultimately complied with the subpoenas in June 2011.

¶ 11 B. Trial

¶ 12 A bench trial took place over five days in October 2011 and one day in February 2012. John Urbelis testified that he was the chief financial officer (CFO) of DCC and served as the accountant for both DCC and DCP. He testified that, pursuant to the company's shareholder agreement, shareholders of DCC must be medical doctors and active employees of DCC. Retirees from the clinic cannot be shareholders. Employees of DCC are paid salaries using a production-based formula, under which the salaries are adjusted based on professional services rendered. Employees receive no dividends from their shares. DCC's shareholder agreement provides that DCC has a right of first refusal in purchasing the shares of a departing physician. The purchase price of the shares is calculated using a buyout formula, which is based on a "legacy amount" that is adjusted for inflation at the time of the shareholder's termination, retirement, or departure. The "legacy amount" is the shareholder's initial investment. During his eight years as CFO, Urbelis had not seen any distributions of equity to shareholders other than buyouts using the formula. Urbelis testified that the value of Jay's shares as of June 20, 2011, pursuant to the buyout formula, was $49,500. According to Urbelis, shareholders had no personal ownership interest in DCC's assets. However, if DCC were sold to a third party, any

profit would be distributed to the shareholders. According to Urbelis, DCC was not in negotiations to be merged or acquired.

¶ 13 Urbelis testified that the shareholders of DCC formed DCP in 2008. Jay was one of 21 members of DCP, which was organized as a limited liability company. Jay made no financial investment in DCP. DCP's only assets were the 70,000 square foot medical building in which DCC operated and the land on which the building was located. DCP was a "fully debted entity at the time it began," which meant that it had an asset value of $0. Its operating agreement contained a formula for calculating the sale price of an ownership interest in DCP. However, the operating agreement prohibited transfers of ownership interests for five years from its creation date. Once the first member became eligible to sell his or her ownership interest, the formula would be based on "an appraised value, the market capitalization of the building, which ha[d] not yet taken place." A member would have to be retired, terminated, or departed from his or her employment with DCC to sell shares in DCP, but would not be required to sell his or her shares upon retiring or departing. According to Urbelis, DCC paid $1.2 million per year in rent to DCP. DCP had not made any distributions to its members, and no member had become eligible to transfer his or her ownership interest.

¶ 14 Jay testified that he was an employee of DCC and had owned 100 shares in that entity since October 1995. He agreed with Urbelis's valuation of his shares and did not expect to receive any more than approximately $50,000 for his shares in DCC. Jay further testified that he signed the DCP operating agreement in January 2008 and that, as with any business venture, the hope was to receive some gain. However, he did not expect to receive anything for his ownership interest in DCP.

¶ 15 Regarding his membership interests[3] in UUC, Jay testified that, beginning in 1995, he invested in two lithotripsy[4] companies, Illinois Kidney Stone, LLC, and Mid-American Mobile. Eventually, the two companies merged into American Lithotripsy Group (ALG). In 2000, Jay owned 41 membership interests of ALG; Jay's parents, Alvin and Gertrude Burstein, owned 40 membership interests; and Jay's brother, Scott Burstein, owned 2 membership interests. Also in 2000, according to Jay, ALG merged into American Urology Centers (AUC), which restricted ownership of its membership interests to practicing urologists. Jay testified that the 42 membership interests that his parents and brother owned "were placed in [Jay's] name as nominee." Jay testified that his parents and brother did not gift their membership interests to him. In 2001, when AUC merged into UUC, Jay received 14.62 membership interests of UUC in exchange for the 83 total membership interests of AUC he owned, either personally (41) or as nominee for his parents (40) and brother (2). Before Jay's parents died, when he received quarterly distributions from UUC for the 14.62 membership interests, he would deposit the funds into a marital checking account and then write a check to his parents for 40/83 of the amount, write a check to his brother for 2/83 of the amount, and leave the remaining 41/83 in the marital checking account. After Jay's father died in 2001 and his mother died in 2007, Jay and Scott each inherited half of their parents' membership interests in UUC. Jay would then distribute UUC payments as follows: 41/83 went to Jay and Georgette to represent the marital portion of the UUC membership interests, 20/83 went to Jay representing his nonmarital inherited portion

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[3] Jay used the term "shares," but, as we noted above, we have substituted the term "membership interests" in place of that term.

[4] "Lithotripsy" is "a medical procedure involving the physical destruction of hardened masses like kidney stones." See http://en.wikipedia.org/wiki/Lithotripsy.

of the UUC membership interests, and 22/83 went to Scott. Jay deposited his 20/83 share into a nonmarital checking account. Jay testified that he used the name "Jay D. Burstein" on his marital checking accounts and used the name "Jay David Burstein" on his nonmarital checking accounts. Jay further testified that he had "[m]eticulously" followed this process of distributing the ALG, AUC, and UUC payments since 2000. The schedule E attached to Jay's tax returns for 2000 to 2010 contained a footnote explaining that Jay was "a nominee of K-1 income" that had been divided and would be reported as income on the returns of his brother and his parents (before they died).

¶ 16 Jay testified that his total income from all sources in 2007 was $574,080; in 2008, his total income was $665,090; in 2009, his total income was $693,886; and in 2010, his total income was $508,352. His income in 2010 was lower because DCC had altered its method of calculating physicians' salaries from being based on services billed to being based on payments collected. The dip in income was temporary, however, and Jay's income had nearly returned to original levels. Jay testified that he had spent $127,494 in attorney fees prior to trial.

¶ 17 Jay further testified that the parties' son, Michael, was a freshman in high school. Jay spent $160 per month on average for clothing for Michael, $200 per month on vacations, and $80 per month for lunch. During the divorce proceedings, Jay had purchased for Michael an X-Box and a Playstation, five or six video games, a $400 bike, an $80 skateboard, a $100 long board, and $300 worth of air soft guns and equipment. He also had spent $3,000 on a guided river trip in Minnesota with Michael.

¶ 18 Jay's brother, Scott, testified that he was a diagnostic and interventional radiologist. Regarding the history of the family's ownership of membership interests in UUC and its predecessors, Scott's testimony was consistent with Jay's testimony. Scott testified that originally he owned two membership interests of ALG, and, after ALG merged into AUC, he

allowed Jay to hold the membership interests as nominee and to handle distributions of income. Scott identified a handwritten note that memorialized the transfer of his shares to Jay. The note is dated August 5, 2000, and states, "Ownership of [illegible word] 2 shares transferred to J. Burstein on or about 7-25-00." Scott further testified that, after AUC merged into UUC and Jay's and Scott's parents died, Scott owned 22/83 of 14.62 UUC membership interests. He testified that he received quarterly checks from Jay as well as annual statements of all UUC distributions. Scott reported the UUC distributions on his tax returns and paid taxes on the income.

¶ 19 Georgette testified that, during the marriage, the parties lived in a large, custom built home with eight bedrooms and a pool. The property was located on over two acres. The parties had employed a house cleaner and someone to help with odd jobs and yard work. During the pendency of the divorce, the court had ordered the house to be listed for sale, and it had sold in June 2010. At the time of trial, Georgette and Michael lived in a three bedroom, 1,500 square foot house on a lot that was smaller than one acre and had no pool. Georgette paid $2,050 in rent per month, and, while she did not have a house cleaner, she did hire a company to do yard work.

¶ 20 Georgette further testified that, every year during the marriage, the parties would take the children on vacation to Cancun, where Jay and Georgette owned three one-week-long timeshares. The family would also travel to Disney World approximately every other year, where they would stay at "top grade resorts," and they took other trips, including skiing trips. Since divorce proceedings commenced, Georgette had not travelled as frequently, because she now had to worry about the cost of trips. Prior to the divorce, she would fly the parties' son, Josh, home from Colorado frequently, or she would fly to Colorado to see Josh. The cost of the trips did not matter. During the divorce proceedings, she visited Josh less often, had to spend

time searching for low air fares, would not rent a car or stay in a hotel, and would travel without Michael.

¶ 21 Regarding her current expenses for Michael, Georgette testified that she paid $125 per month for his cell phone and $300 per month on clothing. She further testified that she was unable to afford gifts for Michael comparable to the gifts that Jay purchased him. According to Georgette's financial affidavit, she spent $2,738.75 per month on Michael, which did not include any portion of household expenses. It did include $1,000 per month for vacations, however. When asked at trial about her vacations with Michael, Georgette testified that she would "like to pick a place and go and not worry about the cost of the trip or how much the cruise cost."

¶ 22 Georgette's expert witness, Joseph Modica, testified that he was a certified public accountant, certified valuation analyst, certified financial forensic analyst, and certified management consultant. Regarding the value of Jay's ownership interest in DCC, Modica testified that he had reviewed DCC's audited financial statements for the years 2005 through 2009, as well as other documents that were listed in his report.[5] Modica also had reviewed documents from two of DCC's subsidiaries, Northern Illinois Diagnostics and Northern Illinois Imaging Specialists, which also were listed in his report. Modica testified that he had not received all of the documents he had requested in order to complete his valuation of DCC. Specifically, based on reviewing the meeting minutes of DCC's board of directors, Modica testified that there were transactions in 2010 involving the company's stock that were not provided, as well as a strategic plan that was not provided. Modica testified that it also would

[5] Because Modica's report is not included in the record on appeal, and was not admitted into evidence, we are unable to determine which documents Modica reviewed.

have been helpful to meet with DCC's management. Other documents that Modica requested but did not receive were listed in his report.

¶ 23 Modica testified that, based on the documents he did receive, he was able to calculate the buyout price of Jay's DCC shares pursuant to its shareholder agreement. According to Modica, the original value of Jay's 100 shares was $32,560. To calculate the buyout price pursuant to the shareholder agreement, the original value would be multiplied by the change in the consumer price index from August 1, 1994, to whatever date the buyout took place. Modica did not testify what the buyout price actually would have been as of any date. When asked if the buyout price would truly and accurately reflect the value of Jay's ownership interest in DCC, Modica testified, "Well, on some levels, yes, but certainly not under a standard value of fair market value, no." Modica explained that calculating the fair market value required the assumption of an arm's length transaction in an open and unrestricted market. A transaction between shareholders was not an arm's length transaction. When asked why fair market value was important, Modica testified that his "understanding *** in valuing businesses [was] Illinois requires a fair market value of the interest."

¶ 24 Addressing Jay's ownership interest in DCP, Modica testified that he reviewed financial statements, tax returns, a "cross-segregation study," an office lease, an operating agreement, and minutes of DCP's annual members' meeting, as well as other documents listed in his report. He further testified that he had requested but not received other documents necessary to complete a valuation, including forecasts, a budget or business plan, an appraisal of the building, and details of any transactions involving the company's stock. Modica testified that, using the buyout formula in DCP's operating agreement, he was able to calculate the value of Jay's ownership interest in DCP as of December 31, 2009, at $358,900. Modica testified that the buyout formula used the percentage of Jay's ownership interest in DCP (which was 5.55556%),

multiplied by net operating rents (which were $545,473 in 2009), divided by a capitalization rate of 8%. Modica testified that his calculation under the buyout agreement did not reflect the fair market value of Jay's ownership interest because it did not take into account the fair market value of the building that was DCP's primary asset. When asked if the fair market value of DCP could be $0, Modica testified that he could not say for sure. He explained that it would depend on the fair market value of the building and the debt owed on the building.

¶ 25 Modica also reviewed documents relating to Jay's ownership of membership interests in UCC, including financial statements, tax returns, accounts receivable, fixed assets, accounts payable, bills of sale for transactions involving the company's stock, the operating agreement, and the "offering memorandum." Documents that Modica requested but did not receive were listed in his report. Modica testified that UUC's operating agreement provided for a buyout price of Jay's membership interests. The agreement provided that the price would either be a lump sum agreed upon by the member and the company managers or an amount equal to the distributions the member would receive in the 24 months following the sale. The agreement further provided that the buyout price would not exceed the amount of distributions the member had received in the 24 months prior to the sale. Modica calculated the buyout price of Jay's membership interests as of December 31, 2009, based on the total distributions Jay received in 2008 and 2009. According to Modica, the buyout price would have been $260,400. When asked if this price reflected the fair market value of Jay's ownership interest, Modica testified that it did not, because it was not the result of an arm's length transaction in an open and unrestricted market.

¶ 26 Jay's rebuttal expert witness, Donald Fontana, testified that he was a certified public accountant and was also certified by the National Association of Certified Valuators and Analysts. Fontana explained that three methods typically were used to value businesses: the

asset approach, the income approach, and the market approach. Fontana testified that he did not have sufficient information to calculate the value of Jay's DCC shares using the asset approach or the income approach. He further testified that he could not use the market approach to value Jay's DCC shares because he had not found any sales of comparable medical practices. Fontana valued Jay's shares in DCC as of September 30, 2010, by looking at prior sales of DCC stock. He valued Jay's shares at $482 each.

¶ 27 Fontana used the "net asset value method" to value Jay's ownership interest in DCP, but he never testified to the valuation he calculated using that method.[6] Fontana also calculated the value of Jay's ownership interest in DCP using the buyout provision in the company's operating agreement. He approximated that Jay's ownership interest would be worth $818,000 under the buyout provision.

¶ 28 Fontana was unable to calculate the value of Jay's 14.62 membership interests in UUC using either the income approach or the asset approach, because he lacked sufficient information. Fontana valued the UUC membership interests by reviewing records of 18 past transactions involving UUC membership interests, but, again, Fontana did not testify to the valuation he calculated using that method.

¶ 29 C. Georgette's Motions to Strike Fontana's Testimony and to Reopen Proofs

¶ 30 Following trial, Georgette moved to strike Fontana's testimony on the basis that he had used improper valuation dates to value Jay's ownership interests in DCC, DCP, and UUC. Georgette also moved to reopen proofs. She argued that both Modica and Fontana had testified that they had insufficient information to properly value Jay's ownership interests in DCC, DCP,

[6] Apparently, the value Fontana reached was disclosed in his report, which was not admitted into evidence.

and UUC. She requested that the court reopen proofs and require the businesses to respond to the subpoenas that she had previously issued, so that the parties' experts could properly value Jay's ownership interests. The court granted Georgette's motion to strike Fontana's testimony but denied her motion to reopen proofs.

¶ 31 D. Georgette's Petition for Contribution to Attorney Fees

¶ 32 On October 13, 2011, Georgette filed a petition for contribution to attorney fees. She attached an affidavit from her attorney indicating that her fees totaled $269,388. She contended that she was unable to pay her fees, that Jay was in a superior position to pay her fees, and that Jay had unnecessarily increased the cost of litigation. She sought an order requiring Jay to pay all or a majority of her fees. On the morning trial was to begin, Georgette brought her petition to the court's attention and indicated that she "intended for this to be *** part of the disposition of the case."

¶ 33 E. Judgment of Dissolution

¶ 34 The trial court issued an oral ruling on June 22, 2012. On September 13, 2012, it entered a written judgment of dissolution that was consistent with its oral ruling. The court awarded custody of Michael to Georgette. Regarding child support, the court found that "child support of 20% of [Jay's] net income, as required under the guidelines, would exceed $5,200 per month from his DeKalb Clinic Chartered wages alone, without additional but undetermined and varying amounts of dividend incomes." The court found that application of the statutory guidelines "is inappropriate" and that "a deviation from [the] statutory guidelines is in the best interests of the child." The court ordered Jay to pay $2,500 per month in child support, and also ordered Jay to pay for Michael's undergraduate education, for his medical expenses, and for his vehicle, including gas, maintenance, and repairs. The court also awarded Georgette $12,500 in permanent maintenance.

¶ 35 Addressing the 14.62 UUC membership interests titled in Jay's name, the court found that, at the time dissolution proceedings commenced, Jay held nominal ownership of the 40/83 of the membership interests that belonged to his parents and of the 2/83 that belonged to his brother. The court found that the membership interests Jay held as nominee had been "assets not belonging to the marital estate, or to the nonmarital estates of either party." The court further found that, during the dissolution proceedings, Jay inherited 20/83 of the membership interests from his mother, which the court classified as Jay's nonmarital property. The court found that the 20/83 inherited portion had not been transmuted into marital property. The court classified the remaining 41/83 of the membership interests, which represented the portion that Jay had acquired during the marriage in his own name, and not as nominee for his parents or brother, as marital property. The court valued the UUC membership interests at $18,081 each, which made the marital portion total $130,185. Rather than distribute the membership interests, the court ordered Jay to pay Georgette 25% of the total income distributions from UUC, as well as 25% of all proceeds from the membership interests in the event that Jay sold or redeemed them.

¶ 36 Regarding Jay's ownership interest in DCP, the court found that it was marital property, but valued it at $0. The court found that DCP had been recently formed to hold title to a newly constructed, fully mortgaged building. However, the court ordered Jay to pay Georgette 50% of any income or proceeds he received from the DCP shares in the future. The court classified Jay's 100 shares in DCC as marital property and valued them at $49,500. The court awarded the DCC shares to Jay.

¶ 37 Regarding attorney fees, the trial court ordered that $170,000 of each party's attorney fees would be paid from the marital estate. The court then found that "[e]ach party has

sufficient assets and income to pay their own reasonable attorneys' fees in any amount exceeding [$170,000]." The court declined to order any contribution to attorney fees.

¶ 38 Georgette filed a motion to reconsider, which the court denied. She timely appealed.

¶ 39 II. ANALYSIS

¶ 40 A. Classification of UUC Shares

¶ 41 Georgette argues that the trial court's classification "as nonmarital property" of 42/83 of the 14.62 membership interests in UUC was against the manifest weight of the evidence. She contends that all of the membership interests that Jay held as nominee for his brother and for his parents (before he inherited them) should have been classified as marital property. She maintains that Jay acquired the membership interests during the marriage and that any agreement between Jay and his family members to have Jay hold the interests as nominee was invalid, because the UUC operating agreement restricted ownership to practicing urologists. She further argues that the 14.62 UUC membership interests must be either wholly marital or nonmarital and cannot be a hybrid of the two. Alternatively, she maintains that Jay commingled the marital and nonmarital portions of the membership interests and that the nonmarital portion of the interests has been transmuted into marital property.

¶ 42 Before distributing property in a dissolution of marriage case, the trial court must first classify the property as either marital or nonmarital. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) defines "marital property" as "all property acquired by either spouse subsequent to the marriage." 750 ILCS 5/503(a) (West 2010). Section 503(b)(1) of the Act further provides that all property acquired by either spouse during a marriage is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2010). A party can overcome the presumption "by a showing that the property was acquired by a method listed in subsection (a) of this Section." 750 ILCS

5/503(b)(1) (West 2010). Among the categories listed in subsection (a) are "property acquired by gift, legacy or descent" and "property acquired *** in exchange for property acquired by gift, legacy or descent." 750 ILCS 5/503(a)(1), (a)(2) (West 2010).

¶ 43 The party claiming that property is nonmarital has the burden of proof, and "[a]ny doubts as to the nature of the property are resolved in favor of finding that the property is marital." *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000). A reviewing court will reverse a trial court's classification of property if it was against the manifest weight of the evidence. *Gattone*, 317 Ill. App. 3d at 352. A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when it is unreasonable, arbitrary, or not based on evidence. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002).

¶ 44 Initially, we note that Georgette's argument that the trial court erred in classifying 42/83 of the UUC membership interests "as nonmarital property" misconstrues the trial court's judgment. The court found that 42/83 of the membership interests, which represented the interests that Jay's parents and brother originally owned, had been property "not belonging to the marital estate, or to the nonmarital estates of either party." Thus, the court treated the property as belonging to third parties, not to the marital or nonmarital estates of either Jay or Georgette. It was only the 20/83 portion that Jay inherited while the dissolution proceeding was pending that the court classified as his nonmarital property.

¶ 45 Nevertheless, we agree with Georgette that the trial court's determination that, at the time the dissolution proceeding commenced, 42/83 of the 14.62 UUC membership interests belonged to third parties was against the manifest weight of the evidence. The UUC operating agreement dated December 31, 2001, which was admitted into evidence, defines "Membership Interest" as "the membership interest or interest of a Member in the Company, including the right to any and all benefits to which such Member may be entitled in accordance with this Agreement, and the

obligations as provided in this Agreement and the [Delaware Limited Liability Company] Act." Among the benefits to which a member is entitled under the agreement is the right to receive distributions of profits.

¶ 46 Section 5.02 of the agreement further provides that "[e]ach member hereby represents and warrants to the Company and to each other Member that: *** (c) the Member is acquiring its Interest for its own account for investment and not with a view to the resale, distribution or fractionalization thereof; *** [and] (i) the Member actively practices urology within a 30-mile radius of any Site." Section 5.03 then provides:

> "(a) Except as otherwise specifically provided herein, no Member shall have the right to:
>
> (i) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration all or any part of his Membership Interest; or
>
> (ii) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of his Membership Interest.
>
> A Member's attempted disposition of Interests in violation of this Agreement will be void *ab initio*, and without legal, beneficial, equitable or other effect."

Paragraph (b) of section 5.03 then provides that a member may transfer, by written instrument, all or any part of his or her membership interest, as long as six requirements are met. One requirement is that the transferee be "a urologist licensed in the Territory who practices within a 30-mile radius of a then existing Site." Another requirement is that the company's managers approve the transfer. Section 5.03(c) provides that "[n]o Transfer shall be effective unless and until the requirements of Section 5.03(b) are satisfied."

¶ 47 The provisions of the UUC operating agreement, when viewed together with the evidence at trial, permit only one conclusion—that Jay acquired the 14.62 UUC membership interests during the marriage and was the sole owner. Jay and Scott both testified that the arrangement, reached among Jay, Scott, and their parents at the time ALG merged into AUC, was to have Jay hold as "nominee" the membership interests that previously had belonged to Scott and his parents. Scott and Jay further testified that the purpose of the nominee arrangement was to have Jay distribute income from the membership interests to Scott and his parents, all of whom had become ineligible to hold the membership interests after ALG merged into AUC. This arrangement continued when AUC merged into UUC, and the AUC membership interests were converted into 14.62 UUC membership interests. For more than ten years, Jay "meticulously" distributed the income he received from the membership interests to Scott and to his parents (before they passed away). Jay also sent annual statements of the distributions to Scott and his parents. On Jay's federal tax returns for 2000 through 2010, he described in a footnote to his schedule E the nominee arrangement among the Burstein family members and disclosed the income that would be reported on the returns of Scott and his parents. Scott testified that he reported his share of the distributions on his annual tax returns and paid taxes on the distributions.

¶ 48 Even accepting for purposes of argument the existence of the nominee arrangement among Jay, Scott, and their parents, the clear and unambiguous terms of the UUC operating agreement expressly prohibited treating Scott and his parents as the "owners" of any portion of the UUC membership interests. The operating agreement indicates that the right to receive distributions of profits is a component of the membership interests. The agreement prohibits a member from selling, assigning, pledging, hypothecating, exchanging, gifting, bequeathing, or otherwise transferring "all *or any part* of his Membership Interest." (Emphasis added.) The

only exception is that a member may transfer, via written instrument, all or any part of his or her membership interest if, among other things, the transferee is "a urologist licensed in the Territory who practices within a 30-mile radius of a then existing Site" and the company's managers approve the transfer. An attempted disposition of a member's interests in violation of the agreement is void *ab initio* and without legal, beneficial, equitable, or other effect. These provisions expressly prohibited Jay from transferring any part of his membership interests, including the right to receive distributions of profits, to Scott or his parents, who were not practicing urologists. Interpreting the nominee arrangement among Jay, Scott, and their parents as placing any aspect of ownership in the names of Scott or his parents would contravene the clear terms of the UUC operating agreement. See *In re Weiss*, 376 B.R. 867, 879 (Bankr. N.D. Ill. 2007) ("These provisions clearly indicate that the profits or proceeds of a limited liability company are part of the membership interest, which cannot be transferred without following the procedures outlined in the operating agreement."); *Condo v. Conners*, 266 P.3d 1110, 1116 (Colo. 2011) ("Because the right to receive distributions is a component of the membership interest, it is impossible to read Article 10.1's express limitation on the transfer of 'any portion' of a membership interest as anything other than a restriction on the assignment of such a right.").

¶ 49 Jay's contention that Scott, Alvin, and Gertrude were the "beneficial owners" of the membership interests, with the right to receive distributions of income from the interests, must fail. Black's Law Dictionary defines "beneficial owner" as "[o]ne recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust." *Black's Law Dictionary* 1137 (8th ed. 2004). Again, to treat Jay as holding legal title to the membership interests, with Scott, Alvin, and Gertrude as holding "beneficial ownership" or equitable title, would contravene the clear terms of the UUC operating agreement. Section 5.03(a) provides that any "attempted

disposition of Interests in violation of this Agreement will be void *ab initio*, and *without legal, beneficial, equitable or other effect*." (Emphasis added.)

¶ 50 In light of these considerations, the only viable interpretation of the nominee arrangement among Jay, Scott, and their parents is that, under the arrangement, Jay is the sole owner of the membership interests. Jay's promise to Scott and his parents to distribute to them the income from the membership interests had no effect on Jay's ownership. Accordingly, the trial court's finding that 42/83 of the 14.62 UUC membership interests had been property "not belonging to the marital estate, or to the nonmarital estates of either party," was against the manifest weight of the evidence. The court's finding that 20/83 of the membership interests became Jay's nonmarital property after he inherited the interests also was against the manifest weight of the evidence, because Jay could not have "inherited" membership interests that he already owned. The trial court should have classified all 14.62 UUC membership interests as marital property, because Jay acquired them during the marriage. Because we have accepted Georgette's first argument, we need not address her alternative arguments that the court erroneously treated the membership interests as a hybrid of marital and nonmarital property or that Jay commingled the marital and nonmarital portions of the membership interests.

¶ 51 At oral argument, Jay contended that section 5.03(e) of the UUC operating agreement expressly permitted Scott and his parents to be beneficial owners who were entitled to receive distributions of income from the membership interests. That section provides:

> "If a transferee of an Interest is not admitted as a Member, he shall be entitled to receive the allocations and distributions attributable to the transferred Interest, but he shall not be entitled to inspect the Company's books and records, receive an accounting of Company financial affairs or otherwise take part in the Company's business or exercise the rights of a Member under this Agreement."

The provision does not mean what Jay contends it means. Section 5.03(e) applies only to "transferees" of membership interests who are not admitted as members. Section 5.03(d), in turn, governs the process for admitting members. Section 5.03(b) makes clear, however, that no person may become a "transferee" unless, among other things, the person is "a urologist licensed in the Territory who practices within a 30-mile radius of a then existing Site" and the company's managers approve the transfer. If the requirements for a transfer under section 5.03(b) are not satisfied, the transfer is ineffective, and the intended recipient of the membership interest does not become a "transferee." Moreover, any transfer of interests in violation of the agreement is void *ab initio* and without legal, beneficial, equitable, or other effect. Because Scott and his parents were not practicing urologists, and because no transfer was approved by the company's managers, any attempted transfer of membership interests to Scott and his parents would have had no effect. Scott and his parents could not have attained the status of "transferee" for purposes of receiving distributions under section 5.03(e).

¶ 52 We also reject Jay's argument that, if 42/83 of the 14.62 membership interests did not qualify as property belonging to third parties, then the court should have classified the interests as Jay's nonmarital property, because Scott and his parents gifted the membership interests to Jay. Courts have defined "gift" as "a voluntary gratuitous transfer of property from donor to donee where the donor manifests an intent to make such a gift and absolutely and irrevocably delivers the property to the donee." (Internal quotation marks omitted.) *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 51. The evidence most relevant to determining donative intent is the donor's own testimony. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 89.

¶ 53 Here, the testimonies of Jay and Scott established that the membership interests were not gifts to Jay. Jay testified that his parents and brother did not gift their membership interests to him. Scott testified that he allowed Jay to hold the membership interests as nominee to handle

distributions of income. Nothing in Scott's testimony suggested any donative intent. After the membership interests were transferred to Jay, he paid all distributions from the transferred interests to Scott and his parents. The transfers to Jay were not gratuitous but were part of an arrangement designed to avoid the restriction on ownership that AUC and UUC placed on the membership interests. Although we concluded above that the only viable interpretation of the nominee arrangement, in light of the provisions of the UUC operating agreement, is that Jay is the sole owner of the membership interests, this does not mean that Jay obtained ownership of the interests gratuitously. Rather, he obtained ownership of the shares only because he agreed to distribute the income from the interests to Scott and his parents. We need not resolve the continued enforceability of that obligation in light of our conclusion that Jay is the sole owner of the membership interests—indeed, we cannot resolve it because that issue and those parties are not before us. At a minimum, however, the presence of the obligation—and Jay's history of "meticulously" fulfilling the obligation—establishes that the transfers of the membership interests to Jay were not gratuitous.

¶ 54 Because we conclude that the court should have classified all 14.62 UUC membership interests as marital property, we remand to the trial court for the limited purpose of distributing in "just proportions" the 42/83 of the 14.62 UUC membership interests that the court erroneously treated as property not belonging to the marital or nonmarital estates of either party. Because Georgette is ineligible to own any portion of the membership interests, the court should distribute the 42/83 of the interests in the same manner it distributed the other 41/83 of the interests previously, which was by ordering Jay to pay Georgette a percentage of all income received, as well as a percentage of any proceeds if Jay sells or redeems the interests.

¶ 55 B. Valuations of DCC Shares and UUC Membership Interests

¶ 56 Georgette argues that the trial court's valuations of Jay's DCC shares and UUC membership interests were against the manifest weight of the evidence. She contends that the court's valuations, which were based on the buyout provisions of the companies' shareholder or operating agreements, did not accurately reflect the fair market value of the ownership interests. She further argues that the court used improper valuation dates, valuing Jay's DCC shares as of June 20, 2011, and his UUC membership interests as of December 31, 2009.

¶ 57 Section 503(d) of the Act requires the trial court to divide the marital property between the parties without regard to marital misconduct and in "just proportions." 750 ILCS 5/503(d) (West 2010). Generally, the value of the property must be established before the court can apportion it. *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 16-17 (1999). One court has described the inherently subjective process of valuing professional corporations:

> "Placing a fair market value on the professional corporation is an art, not a science, and the court must rely on expert witnesses to assist it in this difficult task. There is no exact formula that can be applied, so the trial court must rely on experts who may differ significantly in both methodology and valuation. The trial court must consider the relevant evidence before it; determine the credibility of the experts, the reasonableness of their testimony, the weight given to each of them, and their expertise in the particular area of valuation; and then determine fair market value." *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992).

As long as a trial court's valuation of marital assets is within the range testified to by expert witnesses, it will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Grunsten*, 304 Ill. App. 3d at 17.

¶ 58 Georgette contends that it was improper to rely on the buyout provisions of the companies' shareholder or operating agreements to value Jay's ownership interests, because a

value calculated pursuant to a buyout provision is not reflective of the fair market value of the interests. She relies on *Gunn*, in which the court rejected the husband's argument on appeal that the trial court should have valued the 20 shares he owned in a law firm pursuant to the firm's "Deferred Compensation and Buy/Sell Agreement." *Gunn*, 233 Ill. App. 3d at 180. The trial court in *Gunn* had valued the shares at $5,000 each, while the husband argued that the purchase price under the buy/sell agreement would have been $3,050 per share. *Gunn*, 233 Ill. App. 3d at 180. The appellate court reasoned that the buy/sell agreement was "not necessarily an indication of fair market value," which was " 'the price which a willing purchaser will pay to a willing seller in a voluntary transaction.' " *Gunn*, 233 Ill. App. 3d at 182-83 (quoting *Olsher v. Olsher*, 78 Ill. App. 3d 627, 635 (1979)). The court noted that the only sale of law firm shares from one partner to another had been the sale of two shares to the husband for $10,094 per share, which was above the price dictated by the buy/sell agreement. *Gunn*, 233 Ill. App. 3d at 183. The court further reasoned that the best method for appraising a professional practice was to use more than one approach, which was what the wife's expert had done, using the net-asset-value and excess-earnings methods. *Gunn*, 233 Ill. App. 3d at 182-83.

¶ 59 The problem with Georgette's reliance on *Gunn* is twofold. First, unlike in *Gunn*, where there was evidence of a transaction of law firm stock not in accordance with the firm's buy/sell agreement (*Gunn*, 233 Ill. App. 3d at 183), the trial court here received no evidence of transactions involving either DCC shares or UUC membership interests that did not take place pursuant to the companies' buyout provisions. Urbelis testified that, during his eight years as CFO for DCC, the only transactions he had witnessed involving the company's stock were transactions pursuant to the buyout provision. Similarly, no evidence of transactions of UUC membership interests outside of the company's buyout provision was presented.

¶ 60 Second, and more important, the trial court here did not hear evidence of any valuations of the DCC shares or UUC membership interests other than the valuations pursuant to the companies' buyout provisions. In *Gunn*, the wife's expert witness valued the husband's shares using the net-asset-value and excess-earnings methods, and the trial court relied on the expert's testimony in valuing the stock. *Gunn*, 233 Ill. App. 3d at 183. Here, Georgette's expert did not attempt to value Jay's DCC shares or UUC membership interests using any method other than the buyout provisions. We recognize that Georgette contends that the companies provided her expert with insufficient information to use any other valuation method, and we will address her argument below in the context of her motion to reopen proofs. However, notwithstanding the alleged lack of information, Georgette's expert did not testify that any other method of valuation would have been preferable to relying on the buyout provisions. Rather, Modica simply testified that valuations of Jay's DCC shares or UUC membership interests based on the companies' buyout provisions might not be indicative of the fair market value of the interests. Modica did not discuss the availability or viability of any other valuation method. When asked why fair market value was important, Modica simply testified that his "understanding *** in valuing businesses [was that] Illinois requires a fair market value of the interest." Modica did not explain how an expert would have accurately determined the fair market value of Jay's DCC shares or UUC membership interests.

¶ 61 The trial court was cognizant of the limited value of Modica's testimony. Referring to both Modica and Fontana, the trial court said that it questioned "why they chose not to look at alternative ways to value businesses." The trial court pointed out, for example, that Modica never discussed the availability of sales of comparable medical practices, which would have been information he could have obtained independently of DCC or UUC. Georgette states in her brief that Modica "tried to use the asset approach and the income approach" to value the DCC

shares and UUC membership interests, but Modica never mentioned either of those approaches in his testimony. Modica solely discussed the buyout provisions and the fact that the prices under those provisions might not accurately reflect the fair market value of Jay's ownership interests.

¶ 62 Georgette also quotes the trial court's statement that it was "not a big fan of using the buyout agreements *** because *** there are other issues that can affect [value]," but she ignores the remainder of what the trial court said. The court went on to say, "[A]ll I was able to get from your expert was from looking at all these financial records I can't come up with anything as to what it's worth." The court further stated, "[I]f I had something else from your expert other than [']I don't know what the fair market value is,[']then you'd be in a better position, but that's what I got." The court ultimately said that "if I'm left without a valuation, then I'll come up with a way to allocate the assets that protects both sides." Based on the evidence presented—which included no valuations other than those based on the buyout provisions—we cannot say that the court's decision to value Jay's DCC shares or UUC membership interests based on the buyout provisions was against the manifest weight of the evidence. See *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 899-900 (1999) (affirming a trial court's valuation of the husband's shares in an oral surgery practice based on a buy-sell agreement where the parties' experts presented no alternative value of the shares).

¶ 63 At oral argument, Jay asked this court to adopt a rule that a buyout formula in a company shareholder or operating agreement is determinative of the value of a minority shareholder's ownership interest. We decline to adopt such a rule, which would be in conflict with existing Illinois law. See *Gunn*, 233 Ill. App. 3d at 182 (noting that a trial court is not required to rely on a buy/sell agreement in placing a value on marital property under section 503 of the Act); *Olsher v. Olsher*, 78 Ill. App. 3d 627, 635-36 (1979) (declining to value shares of stock based on

a buyback provision in a shareholder agreement that would have used an outdated value that had not been updated in a number of years). We simply conclude that, because the trial court received no evidence of the value of Jay's ownership interests other than valuations based on the buyout formulas, the court's valuations based on the buyout formulas were not against the manifest weight of the evidence. Based on the evidence before it, the trial court valued Jay's ownership interests in the only manner it could.

¶ 64 Georgette's argument that the trial court used improper valuation dates to value Jay's ownership interests in DCC and UUC is also without merit. The court is to value marital property "as of the date of trial or some other date as close to the date of trial as is practicable." 750 ILCS 5/503(f) (West 2010). In non-bifurcated dissolution of marriage cases, it is not error to use a valuation date near the time of trial, even where the judgment of dissolution is entered several months following the last date of trial. *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 443 (1993).

¶ 65 The court's valuation of Jay's 100 shares in DCC was based on Urbelis's testimony. Urbelis testified that the value of Jay's shares as of June 20, 2011, was $49,500. Georgette notes that June 20, 2011, was "over one year prior to the judgment for dissolution of marriage." Yet, the relevant time period is the time of trial, which began in October 2011 and ended in February 2012. Furthermore, Georgette did not present evidence of a more recent valuation of Jay's DCC shares under the company's shareholder agreement. In fact, while Modica explained how the price of Jay's shares would be calculated under the shareholder agreement, he never performed the calculation or testified to a specific value. Based on the evidence the court received, the valuation date it used for Jay's DCC shares was not improper. See *In re Marriage of Courtright*, 155 Ill. App. 3d 55, 59 (1987) (holding that court's use of valuations that were as

much as 11 months old were not improper where the parties did not present evidence to support more recent valuation dates).

¶ 66 Georgette contends that the trial court valued Jay's UUC membership interests as of December 31, 2009, which, she contends, was improper. However, the court's valuation of Jay's UUC membership interests was taken from the value listed in Jay's written closing argument, which, in turn, was based on the buyout formula in the UUC operating agreement. Contrary to Georgette's argument, the court's valuation of the UUC membership interests was not based on Modica's testimony, which valued the 14.62 UUC membership interests at $260,400 as of December 31, 2009. Modica's valuation amounted to $17,811 per membership interest, while the trial court valued the membership interests at $18,081 each. Rather than attempt to explain how the trial court reached that amount, Georgette simply states that "it appears consistent with the buyout formula in UUC's company agreement." Although she asserts that the court must have valued the UUC membership interests as of December 31, 2009, nothing in the record supports this assertion. Georgette has failed to establish that the trial court used an improper valuation date for Jay's UUC membership interests.

¶ 67 C. Denial of Georgette's Motion to Reopen Proofs

¶ 68 Georgette argues that the trial court abused its discretion in denying her motion to reopen proofs. She filed her motion after the close of evidence and argued that both her expert and Jay's expert had testified that they had insufficient information to properly value Jay's ownership interests in DCC, DCP, and UUC. On appeal, she contends that the court should have granted her motion, because without competent evidence of the value of Jay's shares in DCC, DCP, and UUC, the court was forced to use outdated and improper valuations of the shares.

¶ 69 "In considering a motion to reopen proofs, a trial court should take into account whether there is some excuse for the failure to introduce the evidence at trial, whether the adverse party

will be surprised or unfairly prejudiced by the new evidence, whether the evidence is of utmost importance to the movant's case, and whether there are the most cogent reasons to deny the motion." *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 248-49 (1984). A trial court's denial of a motion to reopen proofs will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1120 (2004). An abuse of discretion occurs when a trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 70 Initially, we note that, while Georgette contends that her expert did not have sufficient documents to properly value Jay's ownership interests in DCC, DCP, and UUC, she has failed to identify what documents, if any, her expert required. With the exception of a few specific documents, Georgette's expert testified at trial that the documents he requested but did not receive were listed in his report, which is not included in the record. With respect to DCC, the only specific documents Modica stated that he had requested but not received were records of transactions involving the company's stock in 2010 and a strategic plan. Modica also testified that it would have been helpful to meet with DCC's management. With respect to UUC, Modica did not specify any documents that were not provided, other than the ones listed in his report, which, again, is not included in the record. On appeal, Georgette asserts, in conclusory fashion, that she had been "trying to gather the pertinent information needed to value the entities since 2008." However, she does not specify what the pertinent information is, or whether it consisted of documents that she requested in her subpoenas. The appellate court is not obligated to search the record on an appellant's behalf or to act as his or her advocate. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). The failure to articulate a clear, specific argument as to why the court abused its discretion in denying her motion to reopen proofs subjects Georgette's argument to forfeiture. *Gandy*, 406 Ill. App. 3d at 875.

¶ 71 Even overlooking Georgette's forfeiture, she has not established that the court abused its discretion in denying her motion to reopen proofs. Georgette argues that her failure to introduce competent evidence of the value of Jay's ownership interests in DCC, DCP, and UUC was not the result of inadvertence or calculated risk. We disagree. While much of the pretrial litigation was focused on the subpoenas that Georgette issued to DCC, DCP, and UUC—and while Georgette was diligent in pursuing those subpoenas—all three entities ultimately complied with the subpoenas. The companies responded to the most recent subpoenas in June 2011. At no point prior to the commencement of trial in October 2011 did Georgette indicate to the trial court that the responses had been incomplete or inadequate. Nor does she argue on appeal that DCC, DCP, and UUC did not fully comply with the subpoenas.

¶ 72 Georgette also argues that the missing evidence (which, again, Georgette does not specify) was of utmost importance to her case, because the trial court received no competent evidence of the value of Jay's ownership interests in DCC, DCP, and UUC. As we discussed above, while Georgette's expert, Modica, testified that valuations based on the buyout provisions of the companies' shareholder or operating agreements might not have accurately reflected the fair market value of Jay's ownership interests, Modica did not discuss the availability or viability of any other valuation method. On appeal, Georgette cites *Gunn* for the proposition that the most successful method of appraising a professional practice is to use several different valuation methods (*Gunn*, 233 Ill. App. 3d at 182-83), but, again, she does not explain how any other valuation method would have been preferable to relying on the buyout provisions. In short, Georgette has not shown how the unspecified evidence she allegedly would be able to obtain were the court to reopen proofs was of utmost importance to her case.

¶ 73 Furthermore, although Georgette notes that the court ordered UUC to produce documents responsive to only seven categories listed in the subpoena she issued to that entity in March

2010, she does not specify what the other categories of documents were, or how the remaining categories of documents would have assisted her expert in determining the value of Jay's UUC membership interests. With respect to DCC and DCP, Georgette acknowledges that the court did not limit the scope of the subpoenas she issued to those entities in March 2010, other than by ordering production only through September 2010. If Modica was unable to value Jay's ownership interests in DCC and DCP (even as of September 2010) after those entities produced documents responsive to all of the categories of documents requested in her subpoenas, it would be tenuous to assume that Modica would be able to value Jay's ownership interests in UUC were that entity ordered to produce documents responsive to all subpoenaed categories. Again, Georgette's brief gives no indication whatsoever of the type of information she would seek to obtain were we to reverse and remand for further proceedings, other than to say that a remand would permit her to "present competent evidence of value." We agree with Jay that it would have been improper for the court to grant Georgette's motion to reopen proofs simply to permit her to continue issuing subpoenas with the hope that she would uncover some unspecified evidence that she had not uncovered during the four years the case was pending prior to trial.

¶ 74 Regarding the value of DCP, which the trial court valued at $0, Georgette asserts that "[o]bviously, membership in DCP has some value." Yet, when asked at trial if the fair market value of DCP could be $0, Georgette's own expert witness seemed to concede that it could. Modica explained that it would depend on the fair market value of the building and the debt owed on the building. DCP's accountant, Urbelis, testified that DCP was a "fully debted entity at the time it began," which meant that it had an asset value of $0. We disagree with Georgette that the court's valuation of DCP necessitates reopening proofs.

¶ 75 We conclude that the trial court did not abuse its discretion in denying Georgette's motion to reopen proofs.

¶ 76 D. Disposition of UUC Membership Interests

¶ 77 Georgette argues that the court's method of dividing the marital portion of the UUC membership interests between the parties was an abuse of discretion. She contends that requiring Jay to pay Georgette 25% of the gross amount of each UUC distribution and of any sale of UUC membership interests means that Georgette "is to receive an unknown amount on an unknown date that may never occur." She argues that UUC could become insolvent, Georgette could pass away before Jay sells his membership interests, or the value of the UUC membership interests could fall. She maintains that one goal of property distributions is finality and that the court should have ordered the UUC membership interests transferred into her name or sold and distributed by a date certain.

¶ 78 Jay responds that Georgette invited the error of which she complains. He quotes the following statement from Georgette's closing argument, which she made during a discussion of Jay's ownership interests in UUC, DCC, and DCP: "It's my position we either need to get the values and divide it [*sic*] accordingly or we need to have income paid to the parties that is derived from those entities as it comes in and then split any net proceeds upon their sale or redemption." In her written closing argument, Georgette similarly argued: "As there is no reliable information as to the value of this asset [*i.e.*, the UUC membership interests], this asset shall be held by Jay with the proceeds from the sale of this asset paid to Georgette within 7 days of the sale or transfer of his ownership interests. Any commissions, bonuses, dividends, interest, or other income derived from this asset shall be divided with Georgette within 7 days of receipt of said payments."

¶ 79 We agree with Jay that Georgette cannot complain of the very distribution she invited the court to make. Under the invited error doctrine, a party may not request to proceed in one manner and then later contend on appeal that the course of action was in error. *In re Marriage*

of Saheb and Khazal, 377 Ill. App. 3d 615, 629 (2007). Even recommending or suggesting that a court proceed in a certain way is enough to give rise to the invited error doctrine. See *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 436 (1989) (where the defendant recommended that a lien be imposed as security for a preliminary injunction, the defendant could not argue on appeal that it was error to impose a lien).

¶ 80 Georgette contends that she did not invite the court's method of distributing the UUC membership interests, because "her first and foremost position was always that the trial court needed a proper valuation of UUC." While that may have been Georgette's primary argument before the trial court, her alternative argument was that, if the trial court did not reach a "proper valuation" of the UUC membership interests, then any income or proceeds from the interests should be divided between Jay and Georgette. The trial court acquiesced in Georgette's alternative argument, and it ordered Jay to share with Georgette any income or proceeds from the UUC membership interests. Georgette cannot now claim on appeal that it was reversible error for the trial court to adopt her proposed treatment of the UUC interests. Furthermore, even if we were to address Georgette's argument, we fail to see how the court's method of distributing the UUC membership interests was inequitable, as Georgette will receive the exact same benefit from the marital portion of the membership interests as Jay receives.

¶ 81 E. Child Support Award

¶ 82 Georgette argues that the trial court abused its discretion in setting child support at $2,500 per month, which, according to Georgette, was 9% of Jay's net wages from DCC. She contends that the trial court did not satisfy its obligations of calculating Jay's net income, and of determining what the guideline amount of child support would be, when it found that "child support of 20% of Plaintiff's net income, as required under the guidelines, would exceed $5,200 per month from his DeKalb Clinic Chartered wages alone, without additional but undetermined

and varying amounts of dividend incomes." According to Georgette, Jay earns over $100,000 per year from his business investments in addition to his salary from DCC, which is income that the trial court should have included in calculating Jay's net income. Georgette further argues that the child support award, which was a deviation from the guideline amount, was inadequate and "does not even allow Georgette to house, feed, and clothe Michael."

¶ 83 Section 505(a)(2) of the Act requires a trial court to determine a minimum amount of child support based upon statutory guideline amounts. 750 ILCS 5/505(a)(2) (West 2010). Where the parties have one minor child, the statutory guideline amount of child support is 20% of the noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2010). The Act defines net income as the total of all income from all sources, minus federal and state income taxes, social security payments, and other deductions. 750 ILCS 5/505(a)(3) (West 2010).

¶ 84 A trial court may deviate from the guideline amount of child support if it finds that doing so is appropriate after considering the child's best interests in light of the following factors: the financial resources and needs of the child and both parents; the standard of living the child would have enjoyed had the marriage not been dissolved; the physical, mental, and emotional needs of the child; and the educational needs of the child. 750 ILCS 5/505(a)(2) (West 2010). If the court deviates from the guideline amount, it must state the amount that would have been required under the guidelines and its reasons for deviating from that amount. 750 ILCS 5/505(a)(2) (West 2010); *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 53. A court need not make written findings or incorporate its findings into its judgment of dissolution; rather, oral comments on the record may satisfy the findings requirement. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). We review a child support award for an abuse of discretion. *Sobieski*, 2013 IL App (2d) 111146, ¶ 53.

¶ 85 Again, Jay raises the doctrine of invited error. Before the trial court, Georgette repeatedly indicated that she was not opposed to a deviation from the guideline child support amount, although she sought a lesser deviation. Furthermore, although Georgette argues on appeal that she never "invited the trial court to disregard Jay's dividend income" in calculating child support, the record indicates otherwise. In her written closing argument, Georgette argued that the statutory guideline amount of child support based on Jay's salary from DCC would be $5,241. She then stated:

> "Since the parties should be sharing equally in the income earned from the LLC entities in light of the lack of reliable value evidence being presented, Georgette would suggest that child support be set based only upon the income Jay earns from DeKalb Clinic (DCC)."

In her oral closing argument, Georgette again argued that child support should be based on Jay's DCC salary, that the guideline support amount was $5,241, and that deviation was appropriate. However, Georgette sought a downward deviation to only $5,000 per month. Given Georgette's positions before the trial court, it is surprising that she now argues on appeal that the court did not satisfy its obligations of calculating Jay's net income, of determining what the guideline amount of child support would be, or of explaining its reasons for deviating from the guideline amount. See *Saheb and Khazal*, 377 Ill. App. 3d at 629 (noting that party may not request to proceed in one manner and then later contend on appeal that the course of action was in error).

¶ 86 Nevertheless, in setting child support at $2,500 per month, the court indicated that it had considered Jay's net income and the statutory guideline amount, the factors listed in section 505(a)(2) of the Act, the parties' testimonies, and Michael's best interests. The court also stated that "child support of 20% of [Jay's] net income, as required under the guidelines, would exceed

$5,200 per month from his DeKalb Clinic Chartered wages alone, without additional but undetermined and varying amounts of dividend incomes," which suggested that it had considered and was aware of all of Jay's sources of income. The court further found that application of the statutory guidelines "is inappropriate" and that "a deviation from [the] statutory guidelines is in the best interests of the child." In denying Georgette's motion to reconsider the child support award, the court further indicated that, based on the testimony at trial and the financial affidavit Georgette provided, Georgette's expenses for Michael had never exceeded $30,000 per year or $2,500 per month. The court stated that an award in excess of $2,500 per month would have been "nothing more than a windfall." We cannot say that the court's findings were insufficient.

¶ 87 Georgette also has not shown that the court abused its discretion in setting child support at $2,500 per month. In fixing the child support obligation of a high-income parent, the trial court must balance competing concerns. *In re Marriage of Lee*, 246 Ill. App. 3d 628, 643 (1993). On one hand, the amount of child support should not be limited to the child's "shown needs," because the child is not expected to live at a minimal level of comfort while the noncustodial parent is living a life of luxury. *Lee*, 246 Ill. App. 3d at 643. On the other hand, a child support award is not intended to be a windfall. *Lee*, 246 Ill. App. 3d at 644.

¶ 88 The record supports affirming the trial court's award. According to Georgette's financial affidavit, she spent $2,738.75 per month on Michael, which did not include any portion of household expenses, but did include $1,000 for vacations, $500 for entertainment, $300 for clothing, $125 for a cell phone, and $80 for gifts. Georgette's financial affidavit also included $211.25 in medical expenses for Michael, which she is no longer obligated to pay, because the judgment of dissolution made Jay responsible for all of Michael's medical expenses. The judgment of dissolution also obligated Jay to pay for Michael's undergraduate education and for a vehicle for Michael, including gas, maintenance, and repairs.

¶ 89 Although Georgette contends that the child support award leaves her unable to provide for "Michael's basic financial needs," her argument is unpersuasive, and is contradicted by the record. She contends that, because she spends $2,050 per month on rent, it is "ludicrous" to suggest that she can "feed and clothe Michael and provide utilities such as electric, gas, water, and phone for another $500 per month." Georgette seems to ignore that a child support award is not intended to shift 100% of the cost of raising a child to the noncustodial parent. Rather, the financial responsibility to support a minor child is a joint and several obligation of both parents. *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 974 (1992). In setting a child support award that deviates from the statutory guideline amount, one of the factors the court is to consider is the financial resources of the custodial parent. 750 ILCS 5/505(a)(2) (West 2010). Georgette was awarded over $700,000 in marital assets, permanent maintenance of $12,500 per month, and 25% of all UUC distributions, which typically exceed $100,000 per year. Thus, Georgette will be receiving a total of approximately $17,000 per month. Georgette's financial affidavit listed total monthly living expenses of only $9,545, which included $2,050 for rent, $1,000 for food, $1,000 for vacations, and all of Michael's expenses. Thus, based on the evidence Georgette presented, she should be able to house, feed, and clothe Michael, while also spending $2,000 per month on vacations for herself and Michael, and still have over $7,455 remaining per month for income taxes and other spending. Georgette has not shown that the court abused its discretion in setting child support at $2,500 per month.

¶ 90 F. Denial of Petition for Contribution to Fees

¶ 91 Georgette's final argument is that the court abused its discretion in denying her petition for contribution to attorney fees without a hearing. Georgette contends that, had the court conducted a hearing, she could have proven the reasonableness of her $269,388 in attorney fees incurred prior to trial. She further argues that Jay had a greater ability to pay attorney fees and

that she would "exhaust her cash award" (meaning the liquid portion of the marital assets she received) if she were required to pay the outstanding portion of her attorney fees.

¶ 92 Ordinarily, attorney fees are the responsibility of the person for whom legal services were rendered. *In re Marriage of Ziemer*, 189 Ill. App. 3d 966, 969 (1989). However, section 503(j) of the Act permits a trial court to order one party to contribute to the other party's attorney fees. 750 ILCS 5/503(j) (West 2010). The court is to look at the same factors it considered in dividing the marital property and in awarding maintenance. 750 ILCS 5/503(j)(2) (West 2010); *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 113. The spouse seeking a contribution to fees must establish his or her inability to pay the fees and the other spouse's ability to pay. *Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 113. "A party has the financial inability to pay attorney fees if the payment of the fees would strip that party of his or her means of support or undermine the party's financial stability." *Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 113. A trial court's decision to award or deny attorney fees under the Act will not be disturbed absent an abuse of discretion. *In re Marriage of Harrison*, 388 Ill. App. 3d 115, 120 (2009).

¶ 93 Section 503(j) provides that "[a]fter proofs have closed in the final hearing on all other issues between the parties (or in conjunction with the final hearing, if all parties so stipulate) and before judgment is entered, a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided." 750 ILCS 5/503(j) (West 2010). In *In re Marriage of Brackett*, 309 Ill. App. 3d 329 (1999), this court interpreted section 503(j) as not "requiring an additional hearing, which would further burden already overburdened trial courts, but, rather, as requiring the trial court to hear, through testimony or otherwise, additional proofs *** in the context of preexisting proceedings." *Brackett*, 309 Ill. App. 3d at 345. The court went on to state that, "[i]f the trial court wishes to hold a separate and distinct hearing on the petition, it has

the discretion to do so." *Brackett*, 309 Ill. App. 3d at 345. The court in *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582 (2001), similarly noted that section 503(j) "does not attempt to formalize the kind of hearing that must be conducted." *Hasabnis*, 322 Ill. App. 3d at 596. The court also recognized the practical reality that, "[i]n most cases, once the trial court has weighed marital property criteria and, if awarded, maintenance criteria, it will have enough of a record to determine the contribution amount." *Hasabnis*, 322 Ill. App. 3d at 596.

¶ 94 Georgette contends that the trial court "should have conducted a hearing and allowed Georgette to present evidence regarding the reasonableness of the fees incurred by her." She contends that, although no separate hearing is required, the court heard no testimony at trial regarding the reasonableness of her attorney fees.

¶ 95 Georgette's argument puts the cart before the horse. Although a court may order one party to contribute to the other party's reasonable attorney fees (see *Hasabnis*, 322 Ill. App. 3d at 596), before a court addresses the reasonableness of the fees, it must first determine whether contribution is warranted. Here, after considering the same factors it considered in dividing the marital property and in awarding maintenance, the court denied Georgette's petition for contribution to attorney fees. The court found that "[e]ach party has sufficient assets and income to pay their own reasonable attorneys' fees in any amount exceeding [$170,000]." There was no need for the trial court to hear evidence on the reasonableness of attorney fees it was not ordering Jay to pay. While the court stated that it thought $170,000 was a reasonable amount of attorney fees and allocated marital assets to pay each party's attorney fees in that amount, the court's finding was irrelevant to the issue of Jay's contribution to Georgette's fees. Georgette has not shown that the court abused its discretion in failing to "hear and decide" her petition for contribution to attorney fees.

¶ 96 Furthermore, in her petition for contribution to fees, Georgette did not request a separate hearing. Rather, Georgette stated:

> "The court will be conducting the trial regarding the equitable distribution of assets and liabilities and support in this case. Defendant respectfully requests that the court take judicial notice of the evidence presented at that hearing, as well as all pleadings, motions, and other evidence presented during the course of this case that may be relevant to the financial situations of Plaintiff and Defendant."

Additionally, on the morning trial was to begin, Georgette brought her pending petition for contribution to fees to the court's attention and indicated that she "intended for this to be *** part of the disposition of the case." The court did exactly as Georgette requested.

¶ 97 Georgette also argues that the court abused its discretion in not ordering Jay to contribute to her attorney fees, because he had a greater ability to pay the fees, and because he needlessly prolonged the litigation by resisting Georgette's attempts to obtain documents relevant to his ownership interests in DCC, UUC, and DCP. In the judgment of dissolution, the court found that "[e]ach party has sufficient assets and income to pay their own reasonable attorneys' fees in any amount exceeding [$170,000]." In ruling on Georgette's first motion to reconsider the denial of her petition for attorney fees (she filed two motions to reconsider—one after the court's oral ruling and one after the court's written judgment), the court explained that it had considered the factors listed in sections 503 and 504 of the Act. The court further found that approximately $600,000 of the marital assets she had received in the dissolution were "relatively liquid," that she was receiving $12,500 per month in maintenance, that she was receiving between $20,000 and $25,000 per year from the UUC membership interests, and that she had an ability to earn an income. Based on those considerations, the court concluded that Georgette had the ability to

pay the outstanding balance of her attorney fees that exceeded the $170,000 in fees already paid from the marital assets. The court did not abuse its discretion in reaching this conclusion.

¶ 98 Regarding Georgette's argument that Jay should contribute to her fees because he needlessly prolonged the litigation, the record does not support Georgette's argument. A court may consider an "unnecessary increase in the cost of litigation" as a factor when deciding whether to order a party to contribute to fees. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 31. Most of the pretrial litigation Georgette discusses in her briefs revolved around her attempts to subpoena documents from DCC, UCC, DCP, and other entities. Nothing in the record suggests that Jay was responsible for those entities moving to quash the subpoenas, or that Jay unnecessarily increased the cost of litigation.

¶ 99 We conclude that the trial court did not abuse its discretion in denying Georgette's petition for contribution to attorney fees.

¶ 100 III. CONCLUSION

¶ 101 Based on the foregoing, we reverse that portion of the judgment of the circuit court of DeKalb County that classified 22/83 of the 14.62 UUC membership interests as property belonging to Jay's brother, Scott, and that classified 20/83 of the membership interests as Jay's inherited nonmarital property. We remand to the trial court for the limited purpose of dividing in "just proportions" the 42/83 of the 14.62 UUC membership interests that the court should have classified as marital property. Otherwise, we affirm the judgment.

¶ 102 Affirmed in part, reversed in part, and remanded.