

NOTICE  
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2012 IL App (4th) 110941-U

Filed 8/7/12

NO. 4-11-0941

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
MECHEAL JANSEN-DAVIDSON,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
and	)	No. 05D56
KEENAN D. DAVIDSON,	)	
Respondent-Appellant.	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Appleton and Cook concurred in the judgment.

### ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion in (1) ordering ex-husband to continue paying \$100 per week in maintenance, (2) ordering ex-husband to submit insurance claim for ex-wife's unpaid medical bill and pay two-thirds of any expense his insurance would not cover, and (3) awarding ex-wife half of the portion of ex-husband's pension plan that accrued during the couple's marriage.

¶ 2 In January 2011, the trial court entered a judgment of dissolution of marriage, dissolving the marriage of petitioner, Mecheal Jansen-Davidson, and respondent, Keenan D. Davidson, and reserving "all remaining issues" for future determination. Following an August 2011 hearing, the court entered an order requiring Keenan, among other things, (1) to pay Mecheal rehabilitative maintenance of \$100 per week for a period of three years, and (2) to submit approximately \$23,000 in previously incurred medical expenses to his insurer and pay two-thirds of any of the debt his insurer refused to pay. In addition, the court awarded Mecheal a

one-half interest in Keenan's pension benefits. Keenan appeals, arguing the trial court abused its discretion in (1) requiring Keenan to continue paying maintenance, (2) ordering Keenan to pay medical bills for Mecheal's surgery without any proof of the bills' existence, and (3) awarding half of Keenan's retirement benefits to Mecheal. We affirm.

¶ 3 In 1997, the parties married in Clark County, Nevada. Four children were born of the marriage. On April 22, 2005, Mecheal filed a petition for dissolution of marriage. In June 2005, the trial court ordered Keenan to pay \$250 per week in child support; and in November 2005, the court ordered Keenan to pay \$100 per week in maintenance. On January 6, 2011, the court entered a judgment of dissolution of marriage, dissolving the couple's marriage. The judgment stated that "all remaining issues, including child custody and support, property distribution, maintenance and attorneys fees are hereby reserved for future determination by this Court."

¶ 4 The parties appeared for a hearing in August 2011 to determine the remaining issues. Following the hearing, the trial court entered a September 2011 order requiring Keenan to pay Mecheal rehabilitative maintenance of \$100 per week for a period of three years and to submit approximately \$23,000 in previously incurred medical expenses to his insurer and pay two-thirds of any of the debt the insurer refused to pay. The court's order also stated Keenan's pension plan would be subject to a qualified domestic relations order (QDRO), with the accrual period of the pension to be from October 22, 1997, until January 6, 2011.

¶ 5 Keenan first argues the trial court abused its discretion in ordering Keenan to pay rehabilitative maintenance to Mecheal. Specifically, Keenan contends on June 10, 2005, the court ordered Keenan to pay \$100 per week in temporary maintenance "until the Petitioner

gained employment." He asserts that Mecheal became employed full-time four years ago, and accordingly, the court should have terminated maintenance rather than order Keenan to pay three years of rehabilitative maintenance.

¶ 6 We do not find support for respondent's contention in the record. We note the docket entry for June 10, 2005, indicates only that the trial court set child support at \$250 per week. The entry does not say anything about temporary maintenance. The first docket entry that mentions maintenance is from November 28, 2005. The written order from that day states that "by agreement of the parties," the court ordered Keenan to pay Mecheal "the sum of \$100.00 per week as temporary maintenance until further Order of this Court." Thus, contrary to Keenan's assertion, the record does not indicate the trial court conditioned its initial temporary maintenance order on Mecheal finding employment.

¶ 7 Keenan also argues that the trial court erred in addressing maintenance at the August 2011 hearing because the matter was "not before the Court" on that date. Keenan asserts that the purpose of the August 2011 hearing was only for the court to make a decision "regarding all remaining issues." Because Keenan filed a petition for modification of judgment in November 2010 but later withdrew that motion, he contends maintenance was not a "remaining issue" for the court to decide in August 2011. We disagree. The court's November 2005 order granting temporary maintenance to Mecheal stated maintenance would continue "until further Order of this Court." In addition, the court's January 2011 dissolution of marriage order explicitly stated that "all remaining issues, including child custody and support, property distribution, *maintenance* and attorneys fees are hereby reserved for future determination by this Court." (Emphasis added.) Thus, Keenan was on notice that the court would later address

maintenance.

¶ 8 Finally, Keenan argues that to the extent the trial court was able to make a decision concerning maintenance, the court's decision "should have been to terminate maintenance and not to increase maintenance." We note, however, that the court did not increase maintenance, but rather, continued the previous \$100 maintenance payments. The court's September 2011 order explicitly stated it was ordering maintenance payments as "a continuation of the maintenance payments previously ordered on November 28, 2005."

¶ 9 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2010)) sets forth the factors the court must consider when determining maintenance awards. *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790, 801 N.E.2d 591, 595 (2003). "The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it was an abuse of discretion." *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010). "An abuse of discretion occurs where no reasonable person would take the view adopted the trial court." *Id.*

¶ 10 In this case, the trial court found the factors outlined in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2010)) supported an award of rehabilitative maintenance to Mecheal and therefore ordered Keenan to continue paying Mecheal \$100 per week for a period of three years. We do not find the court abused its discretion. Although Mecheal became employed after the court's 2005 maintenance order, the court noted Mecheal's present and future earning capacity from her employment were "near minimum wage." By contrast, the court found Keenan made approximately \$75,000 in 2010 and would likely make the same amount of money in 2011. The court stated that it expected Mecheal

would complete training or obtain employment substantially increasing her income within the three-year period. Finally, the court noted that Mecheal (1) had little or no nonmarital property, (2) was the primary caregiver to the parties' four children, and (3) would be unable to support herself at the standard of living established during the marriage without maintenance. Based on the foregoing, the court did not abuse its discretion in ordering Keenan to continue paying Mecheal \$100 per week in maintenance.

¶ 11 Keenan next argues the trial court abused its discretion in ordering him to pay a portion of Mecheal's medical bills because (1) the issue of medical bills was "not properly before the court," (2) the bills were for a "cosmetic surgery" that took place after the couple's divorce, and (3) Mecheal did not offer any proof of the bills' existence or provide notice to Keenan of the bills prior to the August 2011 hearing. We disagree.

¶ 12 First, Keenan's contention that the issue of medical bills was "not properly before the court" is without merit, as the trial court's January 2011 order explicitly reserved judgment on "all remaining issues, including \*\*\* property distribution." Thus, Keenan was on notice that the court would address the unresolved issues between the parties.

¶ 13 Next, we conclude the record does not support Keenan's assertion that Mecheal's surgery took place after the couple's divorce. At the August 2011 hearing, Mecheal testified she underwent vein surgery in 2007. The parties were not divorced until 2011. Accordingly, Mecheal's surgery took place while the couple was still married. Therefore, it was proper for the trial court to order Keenan to pay two-thirds of any expenses his insurance would not cover for Mecheal's surgery.

¶ 14 Moreover, we conclude Mecheal offered sufficient proof of the bills' existence by

testifying about the bills during the hearing. Specifically, she explained she underwent vein removal surgery in 2007 at Vein Clinics of America, and her bill for the procedure was "a little over \$10,000." She further testified her insurance paid for part of the procedure, and she then contacted Keenan and asked him to submit a claim to his insurance for the remainder of the cost of the procedure, which he did not do. Keenan did not offer any testimony to contradict Mecheal's testimony, even though his attorney recalled him to testify after Mecheal testified. Thus, Mecheal's testimony was unrebutted, and we conclude it sufficiently established the existence of the medical bills.

¶ 15 Keenan's argument that he did not have any knowledge of the medical bills is also unconvincing. He points out that Mecheal never submitted proof of the bills to him prior to the August 2011 hearing and Mecheal never filed a motion "regarding unpaid medical bills." Mecheal was not required to file such a motion, as, again, the court's dissolution of marriage judgment explicitly reserved "all remaining issues" to be resolved at a later date. Moreover, as previously detailed, Mecheal offered unrebutted testimony that she told Keenan about the bill when she asked him to submit a claim to his insurance. Based on the foregoing, we find Keenan had sufficient knowledge of the medical bills. The court did not abuse its discretion in ordering Keenan to submit the bills to his insurance and pay two-thirds of any expenses that his insurance company rejected.

¶ 16 Finally, Keenan argues the trial court erred in awarding Mecheal half of Keenan's pension plan "in gross." He again contends the issue was not before the court, and further, the court should have awarded Mecheal only the portion of Keenan's pension plan that accrued during the marriage.

¶ 17 With respect to Keenan's first contention, we again note the trial court's January 2011 order explicitly reserved judgment on "all remaining issues, including \*\*\* property distribution." Accordingly, Keenan was on notice the court was going to address the division of the parties' property and Mecheal was not required to file a motion for the court to do so.

¶ 18 With respect to Keenan's second contention, Keenan misreads the trial court's order. In stating that Keenan's pension plan will be subject to a QDRO, the court set the accrual period relating to the pension from October 22, 1997 (the date of the parties' marriage), until January 6, 2011 (the date of the dissolution of marriage). Thus, the court properly awarded Mecheal only that portion of the pension that accrued during the parties' marriage. See *In re Marriage of Walker*, 304 Ill. App. 3d 223, 227, 710 N.E.2d 466, 468 (1999) ("Pension benefits attributable to contributions during the marriage are marital property.").

¶ 19 For the reasons stated, we affirm the trial court's judgment.

¶ 20 Affirmed.