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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re MARRIAGE OF)	Appeal from the Circuit Court
CONNIE LEFFELMAN,)	of Lee County.
)	
Petitioner-Appellee,)	
)	
and)	No. 07-D-103
)	
JOHN LEFFELMAN,)	Honorable
)	Ronald M. Jacobson,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in reducing, but not terminating, respondent's maintenance obligation: the court was entitled to find that respondent's employment change was not made in good faith, that petitioner had not refused to make reasonable efforts to become self-supporting, and that respondent's reported income, though lower than petitioner's, did not actually reflect his present earnings or future earning potential.

¶ 2 Respondent, John Leffelman, filed, in the circuit court of Lee County, a petition to modify or terminate his maintenance obligation to petitioner, Connie Leffelman. Following the trial court's order reducing maintenance, but not terminating it, respondent filed a second amended motion to

reconsider, which the trial court denied. Respondent filed a timely notice of appeal from the denial of his second amended motion to reconsider. Because the trial court did not abuse its discretion in denying respondent's request to terminate maintenance, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Respondent's and petitioner's marriage was dissolved on May 18, 2009. As part of the dissolution of marriage, on April 3, 2009, the trial court ordered, among other things, respondent to pay petitioner \$250 in weekly maintenance and to pay petitioner a little over \$13,000 as part of the property settlement.

¶ 5 Because respondent failed to pay the \$13,000 related to the property settlement, and also fell in arrears on his maintenance obligation, petitioner filed two petitions for an adjudication of contempt. On December 15, 2010, the trial court found respondent in contempt and ordered him to serve 30 days in jail, unless he paid petitioner \$11,000 on or before December 27, 2010.

¶ 6 Respondent, who was a self-employed truck driver, unsuccessfully attempted to obtain a loan to pay petitioner the \$11,000. After failing to get a loan, respondent sold his truck to his live-in girlfriend for \$11,000, paid that amount to petitioner, and purged his contempt.

¶ 7 Previously, on September 17, 2010, respondent filed his petition to modify or terminate maintenance. He asserted therein that there was a "substantial change in circumstances" that had arisen since the entry of the order requiring him to pay petitioner \$250 weekly. Those alleged circumstances were: (1) due to the economic downturn, his earnings were substantially below what they were when the maintenance was ordered; and (2) although petitioner had had sufficient time to obtain training, education, or employment that would increase her ability to provide for her own needs, she had failed to do so.

¶ 8 On October 17, 2011, the trial court conducted a hearing on respondent's petition to modify or terminate maintenance, at which the following facts were developed. Respondent's girlfriend borrowed the money needed to purchase his truck, and she did so to keep him from going to jail pursuant to the contempt order. After buying the truck, she added the trucking business to her existing corporation and hired respondent as an employee to operate the truck. Both she and respondent determined, based on respondent's prior earnings and expenses and the current income generated by the trucking business, that respondent should be paid \$400 in gross wages per week.

¶ 9 Up to the time of the hearing, the gross receipts for the trucking business for the year were approximately \$90,000. After respondent's girlfriend paid for such things as fuel, repairs, licenses, insurance, road use taxes, and \$14,000 in wages, there was about \$9,200 left before income taxes. According to respondent's girlfriend, she used some of that latter amount to pay toward the loan for the truck and also for "living expenses." The expenses to operate the truck would have been the same had respondent continued to own the business.

¶ 10 Petitioner was employed at a nearby hospital and earned about \$25,000 annually, plus health insurance and retirement benefits. She lived rent-free with her parents, although she did so because she could not "financially live on what [she made]." She contributed by buying groceries, paying the telephone bill, and buying "anything [her] parents need[ed]." She spent about \$500 monthly for fuel for her 1998 Ford Expedition, including for driving her elderly parents to and from medical appointments. Although her monthly expenses exceeded her income by around \$500, much of that difference was attributable to debt payments she accumulated after the dissolution of marriage and to financial assistance she provided to her grown children for telephone and internet services.

¶ 11 Petitioner, who was a high school graduate, admitted that she had not pursued any training or education to improve her employment potential. According to petitioner, she had neither the financial resources nor the time to do so. She explained that she worked a full-time job and spent much of her spare time doing household chores for her parents, taking them to medical appointments, and caring for her granddaughter. There had been no promotion opportunities at the hospital, given her experience and education.

¶ 12 The trial court issued a written order on January 27, 2012. That order stated that the trial court, “having heard the testimony and the evidence presented,” found that respondent had a “unique job as a truck driver” and that he “previously was an independent contractor and is now an employee.” The order further stated that the trial court reviewed respondent’s “income, receipts, and expenses” and petitioner’s “financial needs.” The order, among other things, reduced the maintenance to \$125 weekly, retroactive to January 1, 2011. The order also provided that it was reviewable on respondent’s petition after December 15, 2012.

¶ 13 Respondent’s original motion to reconsider the January 27, 2012, order was filed on February 12; an amended motion to reconsider was filed on March 5. On April 9, respondent filed his second amended motion to reconsider the January 27, 2012, order. The trial court did not rule on the original or the amended motions to reconsider prior to its ruling on the second amended motion to reconsider. The second amended motion asserted that the trial court failed to adequately consider or recognize the change in respondent’s employment status, that the trial court ignored the evidence and argument that, even had respondent remained self-employed, he would not have been able to pay the maintenance, and that the trial court gave “scant recognition” to the evidence that petitioner had

made no effort to enhance her ability to be self-supporting and that she was financially better off than respondent.

¶ 14 Following a hearing, at which no additional evidence was submitted, the trial court entered an August 3, 2012, order denying the second amended motion to reconsider. The order stated that the trial court “considered each and every factor enumerated in section 504” of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West 2010)) and “considered the evidence presented during the [October 17, 2011,] hearing.” The order further stated that the trial court recognized and considered respondent’s present income “but [was] particularly troubled by the fact that the Respondent’s major income-producing asset was sold to an individual with whom he [was] involved in a personal relationship and for whom he [was] now employed.” The trial court was “not convinced that [respondent’s] weekly wages [were] an accurate reflection of his actual earning.” The trial court found that respondent had a “greater likelihood of future increased earnings in excess of that likely to accrue to the Petitioner.” Finally, the order stated that, in issuing its January 27, 2012, order, the trial court considered the parties’ “longstanding marriage” and that there was an “equal division of accrued marital property” at the time of the dissolution.

¶ 15

II. ANALYSIS

¶ 16 On appeal, respondent contends that the denial of his request to terminate maintenance altogether was an abuse of discretion. He asserts that the trial court did not properly consider the changed circumstances related to him and petitioner. He further posits that the trial court mistakenly considered the trucking company’s income and expenses as his, ignored that petitioner’s ongoing financial needs were created by her own doing, and provided little, if any, incentive for petitioner to become self-supporting.

¶ 17 We note initially that no appellee’s brief has been filed. However, because the record is simple, and the claimed errors may be resolved without the aid of an appellee’s brief, we will address the merits of the issues. See *First Capital Mortgage Co. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 18 Section 510(a-5) of the Act provides that “[a]n order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances.” 750 ILCS 5/510(a-5) (West 2010). A substantial change in circumstances means that either the needs of the spouse receiving maintenance, or the ability of the other spouse to pay the maintenance, has changed. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198 (2011). The party seeking modification or termination bears the burden of presenting evidence to demonstrate a substantial change in circumstances. *Id.* Section 510(a-5) requires the court, in any proceeding seeking to modify or terminate maintenance, to consider nine listed factors, as well as the factors set forth in section 504(a) of the Act. 750 ILCS 5/510(a-5) (West 2010); *Blum v. Koster*, 235 Ill. 2d 21, 41 (2009). Although the trial court must consider all of the listed factors, it is not required to make specific findings on the record as to each factor. *Id.* at 38.

¶ 19 Because a maintenance award is *res judicata* as to those facts existing when it was entered, changed circumstances justifying the modification or termination of a maintenance award must occur after the award. *In re Marriage of Connors*, 303 Ill. App. 3d 219, 226 (1999). Thus, in modification or termination proceedings, courts permit the parties to present evidence going back only to the latest maintenance order, to avoid the relitigation of matters already resolved. *Id.*

¶ 20 A trial court’s decision regarding the modification or termination of maintenance will not be disturbed absent a clear abuse of discretion. *Blum*, 235 Ill. 2d at 36. A clear abuse of discretion

occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view. *Id.* Additionally, the credibility of the witnesses and the weight given to their testimony are for the trier of fact, and we may not substitute our judgment for that of the trier of fact. *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 657-58 (1992).

¶ 21 In our case, respondent relies on three circumstances that he asserts are substantial changes warranting termination of his maintenance obligation under section 510(a-5). We will address each of those in assessing whether the trial court abused its discretion in denying respondent's request to terminate maintenance.

¶ 22 First, respondent relies heavily on the fact that, shortly after maintenance was ordered, he experienced a change in his employment status that resulted in his receiving less income. See 750 ILCS 5/510(a-5)(1) (West 2010). Respondent's reliance on this changed circumstance is faulty.

¶ 23 A voluntary change in employment made in good faith may constitute a substantial change in circumstances sufficient to warrant a modification or termination of maintenance. *In re Marriage of Deike*, 381 Ill. App. 3d 620 636 (2008). A change in employment is not made in good faith, however, if it is prompted by a desire to evade maintenance payments. *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 371 (1996). Even a finding that an employment change was made in good faith does not automatically require a modification or termination of maintenance, because the trial court may reject the good-faith change as a substantial change in circumstances. *Id.*

¶ 24 The trial court here, in denying the second amended motion to reconsider¹, stated that it was "particularly troubled" by the facts that respondent sold his truck to his girlfriend and that he now

¹We note that the original motion to reconsider was filed within 30 days of the January 27th judgment, and, therefore, was timely.

worked for her. The court further stated that it was not convinced that respondent's weekly income was an "accurate reflection of his actual earning." These comments show that the trial court doubted whether the change from self-employment to being employed by his girlfriend, and the wages he was paid under that arrangement, were the result of good faith, as required by section 510(a-5)(1). See 750 ILCS 5/510(a-5)(1) (West 2010). The trial court was in the best position to make credibility assessments related to the issue of respondent's good faith, and the evidence certainly supported the trial court's conclusion that respondent's changed employment circumstances were intended to evade maintenance.

¶ 25 Respondent contends that the trial court mistakenly considered the income and expenses of his girlfriend's trucking company as though they were his. The record, however, does not support that assertion. Further, respondent himself alternatively argued to the trial court that, even if his income were calculated as though he were still operating the trucking business, the maintenance should be terminated, because such income was insufficient to justify his paying any maintenance. To the extent the trial court considered the income and expenses of respondent's girlfriend's trucking business in determining respondent's ability to pay maintenance, it did so at the urging of respondent.

¶ 26 Second, respondent maintains that maintenance should be terminated because petitioner had not made any reasonable efforts to become self-supporting. See 750 ILCS 5/510(a-5)(2) (West 2010). This contention lacks merit. Petitioner, who had only a high school education, continued to be employed full-time. Although she lived with her parents rent-free, she performed a variety of household chores, including cooking, cleaning, and laundry. She also drove her elderly parents to their medical appointments and cared for her granddaughter. She also contributed grocery money

to her parents and paid for the phone bill and other expenses as needed. According to petitioner, she had neither the time nor the money to seek any training or education. It seems unreasonable to expect petitioner to obtain training or education under her present circumstances, or to have done so in the relatively short time between the dissolution of the marriage and respondent's filing of his petition to modify or terminate maintenance.

¶ 27 Respondent contends that petitioner's "ongoing needs" were "created in full by [her] financial profligacy." Again, however, the undisputed evidence showed that petitioner lived with her parents rent-free because she could not afford to pay rent and live on her own. She spent money driving her parents to medical appointments and contributed to the household by paying for groceries and paying the phone bill. She also drove a relatively old vehicle. Although petitioner accumulated personal debt after the dissolution and paid for her children's internet and telephone services, it hardly can be said that she was living irresponsibly.

¶ 28 Third, respondent argues that it is not appropriate to require him to continue to pay maintenance when petitioner currently makes more money than he does. See 750 ILCS 5/510(a-5)(7) (West 2010). This argument is faulty for two reasons. First, the trial court found that respondent's reported income was not an accurate reflection of his actual earnings and that, as a professional truck driver, he had greater earning potential than petitioner. Those conclusions are supported by the record. Second, even if petitioner actually earns more than respondent, the difference is minimized in light of petitioner's significant financial contributions on behalf of her elderly parents. Moreover, it is unlikely that the trial court ignored altogether any such difference, as it reduced the maintenance by 50% and made it reviewable within one year. That indicates a proper exercise of the trial court's discretion.

¶ 29 Respondent did not carry his burden of proving that a substantial change in circumstances warranted the termination of maintenance. See *In re Marriage of Anderson*, 409 Ill. App. 3d at 198. Neither has he demonstrated that the trial court abused its discretion in denying his petition to terminate maintenance. See *Blum*, 235 Ill. 2d at 36.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Lee County.

¶ 32 Affirmed.