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2013 IL App (3d) 110897-U

Order filed January 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF) Appeal from the Circuit Court
MARGARET ANSBURG,) of the 12th Judicial Circuit,
) Will County, Illinois,
Petitioner-Appellee,)
) Appeal No. 3-11-0897
and) Circuit No. 08-D-182
)
FRANCIS ANSBURG,) Honorable
) Dinah L. Archambeault,
Respondent-Appellant.) Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Wright and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* In a proceeding for dissolution of marriage, the trial court did not err in awarding sole custody of the parties' five minor children to petitioner, reserving the issue of respondent's visitation with the children, dividing the assets and liabilities between the parties, and requiring respondent to contribute to petitioner's attorney fees. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 Petitioner, Margaret Ansburg (Margaret), filed for dissolution of her marriage to respondent, Francis Ansburg (Francis). After a trial, judgment for dissolution was entered. Francis appeals from that judgment, arguing that the trial court erred in: (1) awarding sole

custody of the parties' five minor children to Margaret; (2) reserving the issue of Francis's visitation with the children; (3) awarding Margaret a larger share of the marital estate; (4) allocating a smaller portion of the total debt to Margaret; and (5) ordering Francis to contribute to Margaret's attorney fees. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4 Margaret and Francis were married in 1995, had five children, and lived in the marital home in Mokena, Illinois. Margaret worked part-time as a nurse, and Francis worked full-time as a union plumber. In 2008, Margaret filed for dissolution of marriage. Francis filed a counter-petition for dissolution.

¶ 5 Throughout the course of proceedings prior to trial, various orders for temporary relief were entered by the trial court. In February 2008, an agreed order was entered granting Margaret exclusive possession of the marital home and temporary custody of the children and setting a temporary visitation schedule for Francis. In December 2008, the parties entered into a joint parenting agreement naming Margaret as residential parent of the children and setting forth a specific visitation schedule for Francis. About a year later, in December 2009, Margaret filed a motion to vacate the joint parenting agreement, alleging that Francis had failed to have contact with the children and had not had contact with them since May 2009. Francis filed a response to the motion in which he agreed that joint parenting was no longer feasible and requested that his visitation be suspended until the divorce was completed. After a later hearing, the trial court granted Margaret's motion and suspended the joint parenting agreement as to all terms.

¶ 6 In December 2010, the case proceeded to a trial on all unresolved matters. Margaret was represented by counsel. Francis, who changed attorneys several times throughout the

proceedings, represented himself *pro se*. The evidence presented at trial consisted of the testimony of Margaret and Francis and various documents that were admitted as exhibits. That evidence established, among other things, that: (1) Margaret was 49 years old, and Francis was 48; (2) the parties' assets consisted of the marital home in Mokena, a timeshare in Mexico, three vehicles (Margaret's van and Francis's truck and motorcycle), various retirement accounts, Francis's defined-benefit pension, various life-insurance policies, and a \$75,000 legal settlement of Francis (\$50,000 after attorney fees were taken out) that was based upon an incident which occurred after the parties had separated; (3) Margaret had contributed \$50,000 of her nonmarital funds toward the purchase of the marital home; (4) the parties' liabilities consisted of a mortgage, a home equity loan, certain vehicle loans, various credit card debts, a personal loan of Francis, and attorney fees that were due of Margaret; (5) at the time of the trial, Margaret was working as a nurse about 33 hours per week, and Francis was unemployed; (6) neither party was seeking an award of maintenance; (7) the parties' five children were between 7 and 14 years of age; and (8) all of the children were living with Margaret in the marital home and had not had contact with Francis since about May 2009. At the conclusion of the evidence, the trial court took the case under advisement.

¶ 7 The trial court later issued a written judgment for dissolution of marriage (judgment). In the judgment, the trial court went line by line through all of the parties assets and liabilities and ruled as to how each would be distributed. Among other things, the trial court: (1) awarded to Margaret the marital home and the equity in the home (\$27,000) as partial reimbursement for the \$50,000 of nonmarital funds she had contributed; (2) awarded to each party his or her own vehicle or vehicles; (3) awarded to Francis the time share in Mexico; (4) awarded to Francis the

money from the legal settlement; (5) divided the marital portions of the retirement accounts between the parties and awarded the nonmarital portions (or accounts) to each party individually; (6) awarded to each party his or her own insurance policies; (7) allocated each party's individual debt to that particular party; (8) allocated to Margaret the mortgage debt; and (9) divided up the marital debt between the parties. In addition to distributing the assets and liabilities, the trial court also awarded to Margaret sole custody of the parties' five children and reserved the issue of Francis's visitation.

¶ 8 Francis later filed a motion to reconsider and a motion to set a specific visitation schedule. A child's representative was appointed to represent the five children in the matter, and limited visitation between Francis and the children was resumed in about May 2011, as Francis and the children began the process of reunification. After a ruling on Francis's motions, this appeal followed.

¶ 9 ANALYSIS

¶ 10 As his first point of contention on appeal, Francis argues that the trial court erred in awarding sole custody of the children to Margaret. Francis asserts that the trial court failed to make the legal findings necessary under section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610(b) (West 2010)) to support such a ruling. However, as Margaret correctly points out, Francis had previously agreed that joint custody was no longer feasible, did not seek sole custody of the children, and did not object at trial to either the termination of joint custody or to an award of sole custody to Margaret. Therefore, Francis cannot complain on appeal that the trial court's order of sole custody was improper. See 750 ILCS 5/610(b) (West 2010) (if the parties agree to a termination of a joint custody agreement, the

trial court shall terminate joint custody and make any modification that is in the child's best interest; specific findings of fact are required if either parent opposes the modification or termination); *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 58 (a party cannot complain about an alleged error to which he consented but, rather, must object to that error in the trial court to properly preserve it for appellate review).

¶ 11 As his second point of contention on appeal, Francis argues that the trial court erred in reserving the issue of visitation. Francis asserts that by doing so, the trial court improperly restricted his visitation without first making a finding that the restriction was warranted because of serious endangerment. Margaret asserts, among other things, that this issue is moot because visitation was later set by the trial court in response to Francis's postjudgment motion. We agree with Margaret's assertion. See *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 150 (2004) (issue of denial of petition for sibling visitation was moot because after appeal was filed, parties agreed to allow sibling visitation to occur). In doing so, we note that Francis did not make any argument on appeal against the application of the mootness doctrine to this issue.

¶ 12 As his third point of contention on appeal, Francis argues that the trial court erred in its distribution of the marital assets and total debt between the parties. Francis asserts that it was inequitable and an abuse of discretion for the trial court to award to Francis, who was unemployed and not receiving unemployment benefits, about 40% of the marital assets and about 78% of the total debt while awarding to Margaret, who was employed as a nurse, about 60% of the marital assets and only about 22% of the total debt.¹ According to Francis, the inequity of the

¹ Francis does not explain how he calculated those percentages, and we take no position on whether they are accurate.

division is further evidenced by the fact that despite the respective financial condition of each of the parties, the trial court ordered Francis to contribute \$7,500 to Margaret's attorney fee balance.

¶ 13 Margaret argues that no abuse of discretion occurred. Margaret asserts that the trial court divided the marital assets as it did to essentially equalize the division between the parties. As to the total debt, Margaret asserts that Francis did not object to her suggestion in the trial court as to an appropriate division of the debt, which the trial court adopted, and cannot now challenge that division on appeal. Finally, as to the attorney fees, Margaret argues that the contribution order was reasonable under the circumstances.

¶ 14 A trial court's distribution of property in a dissolution proceeding will not be reversed on appeal absent an abuse of discretion. *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 822 (2007). That same standard of review also applies to a trial court's order of contribution to attorney fees. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 646 (2009). The threshold for finding an abuse of discretion is high and will not be overcome unless it can be said that no reasonable person would have taken the view adopted by the trial court. *In re Leona W.*, 228 Ill. 2d 439, 460 (2008).

¶ 15 The Act requires the trial court in a dissolution proceeding to divide the marital property between the parties in just proportions considering all relevant factors. 750 ILCS 5/503(d) (West 2010). Each case must be evaluated based upon its own unique facts. *Joynt*, 375 Ill. App. 3d at 821. The factors to be considered include the following: (1) the contribution of each party to the marital estate; (2) the value of the property assigned to each spouse; (3) the duration of the marriage; (4) the relevant economic circumstances of each spouse; (5) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities,

and needs of each spouse; (6) the custodial provisions for the parties' children; (7) whether the apportionment is in lieu of or in addition to maintenance; and (8) the reasonable opportunity of each spouse for future acquisition of capital assets and income. 750 ILCS 5/503(d) (West 2010); *Joynt*, 375 Ill. App. 3d at 821-22. The touchstone of whether any particular division is proper is whether it is equitable in nature. *Joynt*, 375 Ill. App. 3d at 821. An equitable division of property, however, does not require that it be mathematically equal. *Joynt*, 375 Ill. App. 3d at 821. In addition, an order of contribution to attorney fees must be reasonable under the circumstances and should be evaluated using the same criteria listed above. 750 ILCS 5/503(j) (West 2010); *Sanfratello*, 393 Ill. App. 3d at 655.

¶ 16 After reviewing the record in the present case, we find that the trial court's distribution of the marital assets and debts did not constitute an abuse of discretion. In a detailed written order, the trial court set forth the basis for its ruling. It is obvious from that order that the trial court considered all of the relevant factors, including the financial circumstances of each of the parties. The trial court went through all of the parties' assets and debts and tried to distribute them in a fair and reasonable manner, which for the most part, was relatively equal. The real property was divided with Margaret being awarded the marital home and the equity in the home, which was not enough to reimburse her for the amount of nonmarital funds she had contributed, and with Francis being awarded the time share in Mexico. As for the retirement accounts and pension, the marital portions of those accounts was split between the parties and the non-marital portions (or accounts) were awarded to each party individually. The insurance policies were also awarded to each party individually. In a similar manner, the trial court divided the total debts between the parties and made each party responsible for a portion of the marital debt and for all of his or her

own individual debt. As the initial order and the order upon reconsideration indicate, the trial court's ruling was very thorough and well supported, and we do not agree with Francis's contention to the contrary. Nor are we persuaded that the distribution in the present case was inequitable, even if the distribution was unequal and favored Margaret, as Francis contends. See *Joynt*, 375 Ill. App. 3d at 821. It was the trial court's responsibility to hear the evidence and to weigh the factors in reaching an appropriate distribution, and we will not substitute our judgment for that of the trial court as to those matters on appeal. See *In re Marriage of Sheber*, 121 Ill. App. 3d 328, 337-38 (1984).

¶ 17 We are also not persuaded that the trial court's order requiring Francis to contribute to Margaret's attorney fees was unreasonable. In making that decision, the trial court had before it evidence as to the respective financial condition of the parties and was aware, at least as of reconsideration, that Margaret had paid \$250 in attorney fees and had an outstanding balance of about \$17,000, and that Francis had paid about \$27,000 in attorney fees to his various attorneys.

¶ 18 **CONCLUSION**

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 20 Affirmed.