

No. 1-13-0004

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF KATHLEEN CISZEWSKI,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
and)	No. 04 D1 2034
)	
DONALD CISZEWSKI,)	Honorable
)	Veronica B. Mathein,
Respondent-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed trial court's order awarding petitioner an extension of maintenance that was reviewable after two years over respondent's contentions that the extension and decision to make it reviewable was an abuse of discretion, that the court misapplied the law by *sua sponte* reopening proofs and reversing its decision on its own motion, and that the court abused its discretion in reopening proofs.

1-13-0004

¶ 2 Respondent Donald Ciszewski and petitioner Kathleen Ciszewski were granted dissolution of marriage. Respondent appeals from an order of the circuit court of Cook County granting petitioner's motion to extend maintenance/spousal support for two years, and holding that the maintenance would be reviewable after two years. On appeal, he maintains that the trial court abused its discretion in granting an extension, continuance and further payment of maintenance, that the court misapplied the law where it *sua sponte* reopened proofs and then changed its holding that the two-year period of maintenance would be terminable to reviewable after two years, and that the court abused its discretion in reopening proofs. Petitioner has not filed a brief in response; however, we may consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 On November 17, 2004, petitioner filed a petition for dissolution of marriage after 17 years of marriage, and on January 28, 2007, judgment for dissolution of marriage was entered as well as a court approved marital settlement agreement and a joint parenting agreement of their son, 19 years of age, and daughter, 17 years of age. The marital settlement agreement provided, in relevant part, that respondent would pay petitioner \$2,729 per month in unallocated maintenance and support, and that commencing June 2007, the unallocated support payment should be reduced to \$2,107 per month. The agreement further provided that respondent shall be obligated to pay petitioner unallocated support and maintenance for a period of three years from February 1, 2007, and thereafter, the obligation to pay shall be reviewable by the court. During the three years, petitioner shall have the affirmative obligation to make reasonable efforts at

1-13-0004

obtaining a job and becoming self-supporting.

¶ 4 On January 29, 2010, petitioner filed a petition to review and extend the maintenance. Petitioner alleged that she is currently unemployed and her only source of income is the maintenance she receives from respondent. Petitioner further alleged that she has unsuccessfully attempted to procure employment and is in need of continued maintenance.

¶ 5 On September 13, 2010, the parties entered an agreed order, which provided, in relevant part, that respondent shall pay spousal maintenance in the amount of \$1,500 per month until December 2012, with it being reviewable upon proper notice and a properly filed petition before December 1, 2012. The order further provided that petitioner was obligated to seek and secure employment, become self-supporting and otherwise maintain employment. She shall continue to keep and maintain a diary regarding the activity pertaining to each employment search, application and actual jobs worked. The order also provided that petitioner shall apply for paid, full-time employment to at least five employers per week and produce her job search diary monthly to respondent until employed.

¶ 6 On March 16, 2011, respondent filed a petition for rule to show cause for indirect civil contempt and for other relief. Respondent alleged, in relevant part, that petitioner failed to seek employment, provide a job diary, or become employed. Respondent subsequently provided the court with job search diaries for the period of February 2010 through May 2010, and then from April 2011 to June 2011. The court found this information sufficient, and denied respondent's petition.

1-13-0004

¶ 7 On September 20, 2012, petitioner filed a petition to review and extend maintenance. Petitioner alleged that she is currently unemployed with her only source of income being the \$1,500 per month in maintenance she receives from respondent, has made unsuccessful attempts to procure employment, and is in need of continued maintenance. Petitioner alleged that she is still applying weekly for jobs, and is attending Olive-Harvey College with the goal of obtaining her associate's degree in accounting. She alleged that she attends classes three times a week.

¶ 8 On December 11, 2012, a hearing was held on petitioner's petition to review and extend maintenance. Petitioner appeared *pro se* and respondent was represented by counsel. Petitioner testified that she has been applying to five jobs a week and providing this information to respondent. Petitioner further testified that she is attending school at Olive-Harvey College and is working towards an associate's degree in accounting. She expects to graduate in December 2013. Petitioner testified that she pays 40% of her daughter's college expenses. Petitioner asked for two more years of maintenance at the same amount, noting that she is looking for a job and continuing her education. Petitioner further told the court that at the end of those two years she would want a review to possibly extend the maintenance.

¶ 9 On cross-examination, petitioner noted that there were several times that respondent asked her for her job search diary. Petitioner also testified that she did not include all the jobs she applied for in the job search diaries such as the ones applied for in Minnesota. Petitioner explained that she some times applied to more than five jobs per week but just listed five job applications as that was the minimum required by the agreed order.

1-13-0004

¶ 10 Petitioner further testified that in 2010, she received \$62,000 from the sale of their residence. She used that money to buy a 2009 car, and used the rest on her children. Petitioner also testified that she goes on a vacation once a year for two weeks. She goes to Minnesota where she rents a cabin with several family members. She only pays for some of that trip. The current balance of her checking account is \$250, and she has no savings account. Petitioner noted that besides her diabetes, she was in good health.

¶ 11 Petitioner further testified that the last time she attended school prior to her recent attendance was in 2005, and that during the marriage, she raised the children. Petitioner testified that she currently lives with her mother, does not pay rent, and receives \$2,700 in financial aid per school semester.

¶ 12 Respondent testified that petitioner has not been consistent with providing him her job search diaries. He noted that there were several duplicate entries in the job search diaries petitioner provided him. Respondent also testified that his son resides with petitioner, and contributes to the household expenses. Respondent noted that his income in 2010 was \$100,000 but since then it has been reduced to \$52,000.

¶ 13 Petitioner then explained to the court that there were duplicate entries because those were staffing agencies that she applied through for a job. Petitioner told the court that she started school most recently in August 2012, and prior to that date she was searching for jobs.

¶ 14 In closing, respondent argued that petitioner has not been forthcoming with this court, and did not attend school until recently. Respondent argued that he did not believe petitioner's

1-13-0004

testimony that she applied for five jobs per week for the last two and a half years. Respondent argued that the rehabilitative maintenance he has provided petitioner has sufficiently covered her expenses, and she now lives rent free with an adult son who is paying for her support.

Respondent told the court that petitioner required no additional aid, and asked it to terminate the maintenance effective immediately.

¶ 15 Petitioner responded that her son does not support her. She further stated that she pays the bills for herself and her daughter as well.

¶ 16 The court then noted that there was no evidence that petitioner's son supported her and that her expenses were "very reasonable, minimal." The court then stated that it was disappointed that petitioner did not do more in the last two years to go to school, but was attending school now. The court held that petitioner should receive maintenance, but it should end in a couple of years as respondent has been paying maintenance for seven years. The court then awarded maintenance for an additional two years with it ending in December 2014.

¶ 17 Petitioner responded that she will not be able to continue on if she does not have a job, and has been looking for jobs but has been unsuccessful. The court then reopened proofs over respondent's objection. Petitioner then noted that she has free insurance now except for having to pay for her prescriptions, but when she makes money it will change her eligibility. The court then held that it would make the maintenance reviewable in two years.

¶ 18 The court issued a written order noting that after reopening proofs over respondent's objection, maintenance shall continue for an additional 24 months at \$1,500, and shall be

reviewable for an extension upon the filing of a proper petition by petitioner if she completes her associate's degree by December 1, 2014. and continues to prepare and tender a complete job search diary. In addition, petitioner shall document all part-time work activity, and all other efforts to become self-supporting.

¶ 19 On appeal, respondent contends that the trial court abused its discretion in granting an extension, continuation and further payment of maintenance. He maintains that petitioner failed to meet her burden of proof that she is actively acquiring skills, and making a good faith effort to seek appropriate employment, is appropriately employed or for good reason is unable to work.

¶ 20 Where, as here, the parties agree that the maintenance and support is reviewable after a period of years, the parties have agreed to the general review of maintenance. *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶¶24-25. A general review of maintenance does not require the moving party to prove a substantial change in circumstances. *Blum v. Koster*, 235 Ill. 2d 21, 35-36 (2009); *In re Marriage of S.D.*, ¶24 . Instead, the trial court considers the factors set forth in sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), 510(a-5) (West 2010)) in determining whether to modify the maintenance. *In re Marriage of S.D.*, ¶24. No one factor is determinative. *In re Marriage of Martin*, 223 Ill. App. 3d 855, 862 (1992). The decision whether to extend maintenance is reviewed for an abuse of discretion. *In re Marriage of Martin*, 223 Ill. App. 3d 855, 863 (1992).

¶ 21 Here, the record shows that during the parties' 17-year marriage, petitioner raised their children, thereby delaying her education, training, employment or career opportunities. After the

1-13-0004

divorce, petitioner attempted to secure a job by applying to five jobs per week but was unsuccessful. She kept a diary of her job search which she provided to the court. Petitioner only had \$250 in her checking account and no savings account, and although she received \$62,000 from the sale of the family home, she used it to purchase a used car and pay for her children's expenses. Petitioner was also seeking to improve her skill level by attending school to obtain her associate's degree in accounting. With an expected graduation date of December 2013, petitioner was taking steps toward financial independence. Petitioner indicated that she went on a small vacation every year where she rented a cabin in Minnesota with several of her family members. She also paid for her daughter's expenses, and her son was residing with her at her mother's home where she did not have to pay rent. Petitioner's expenses, as noted by the trial court, were minimal and reasonable. In addition, petitioner had only received maintenance for 7 years after their 17-year marriage. As we are required to review the court's decision under the deferential abuse of discretion standard, and not to substitute our opinion for a reasonable decision made by the trial court, we affirm the court's ruling on the extension of maintenance.

¶ 22 In reaching this conclusion, we have examined *Clark v. Clark*, 237 Ill. App. 3d 492 (1992), *In re Marriage of McGory*, 185 Ill. App. 3d 517 (1989), and *In re Marriage of Courtright*, 229 Ill. App. 3d 1089 (1992), cited by respondent and find his reliance on them misplaced. Unlike *Clark*, where the receiving spouse's expenses were extravagant with her purchasing a \$17,000 ring and a \$7,000 carpet, and she failed to pay important expenses such as real estate taxes and health insurance, petitioner's expenses were reasonable and minimal with

1-13-0004

her purchasing a used car and paying for her children's expenses. *Clark*, 237 Ill. App. 3d at 496. In addition, the testimony of the receiving spouse in *Clark* regarding her job search and educational plans was unclear and vague. *Clark*, 237 Ill. App. 3d at 496. Here, petitioner's answers regarding her job search and education were clear, and she provided the court with the diary of her job search. Accordingly, we find no abuse of discretion in the court's finding that the maintenance should be extended.

¶ 23 In *In re Marriage of McGory*, 185 Ill. App. 3d at 520-21, the reviewing court upheld the trial court's decision to terminate the former wife's maintenance support where she ceased being a full-time student, and was not diligent in seeking employment where she only sent out a "few" resumes, and briefly and unsuccessfully attempted to start a business. Here, by contrast, petitioner was attending school three times a week to obtain her associate's degree in accounting with an expected graduation date of December 2013, and was seeking employment where she was applying to five jobs per week, and provided a copy of her job search diary to the court. Accordingly, we find *In re Marriage of McGory* distinguishable.

¶ 24 In *In re Marriage of Courtright*, 229 Ill. App. 3d at 1093, the receiving spouse was employed as a substitute teacher and refused to seek full time employment, and thus made no good faith effort to become self-sufficient. Here, by contrast, petitioner was seeking full time employment where she was applying to five such jobs a week and was working on her associate's degree in accounting. Accordingly, *In re Marriage of Courtright* is distinguishable from the case at bar.

¶ 25 Notwithstanding, respondent further maintains that the record reveals that it was against the manifest weight of the evidence for the court to have ruled that the maintenance was reviewable. He maintains that each and every instance at the hearing points to creating an incentive for a finite period of maintenance and not a reviewable period.

¶ 26 The trial court has the authority to award time-limited maintenance with a provision for review. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 208 (2009). The purpose of a time limit on the maintenance award is to motivate the recipient spouse to take the steps necessary to attain self-sufficiency, and where the award is made reviewable, at the end of the specified time period, the court determines whether the maintenance award should be extended. *In re Marriage of Awan*, 388 Ill. App. 3d at 208. We review for an abuse of discretion the court's decision to make a maintenance award reviewable. *In re Marriage of Awan*, 388 Ill. App. 3d at 208.

¶ 27 We find no abuse of discretion here in the court awarding reviewable maintenance where petitioner has demonstrated that she has been regularly searching for jobs and is currently enrolled in school to obtain an associate's degree with an expected graduation date of December 2013. Furthermore, the court indicated in its order that the maintenance was only reviewable upon the filing of a proper petition by petitioner *if* she completes her associate's degree by December 1, 2014 and continues to prepare and tender a complete job search diary. This was consistent with the goal of the Act to permit parties to sever economic ties within a reasonable time period and to provide an incentive for the party seeking maintenance to acquire the skills necessary to become self-sufficient. *In re Marriage of Callaway*, 150 Ill. App. 3d 712, 716-17

(1986). The reviewable maintenance award in this case provides an incentive for petitioner to become self-sufficient, and if she does not make a reasonable effort to do so, the court may terminate the maintenance. *In re Marriage of Awan*, 388 Ill. App. 3d at 209.

¶ 28 This holding is not contrary to *In re Marriage of Wolf*, 180 Ill. App. 3d 998 (1989), cited by respondent. *In re Marriage of Wolf*, 180 Ill. App. 3d at 1008, also noted that the purpose of providing maintenance for a certain length of time is to provide an incentive for the spouse receiving maintenance to use this time in diligently trying to obtain the necessary training or skills to become self-sufficient. As noted above, the award of reviewable maintenance in this case, with the caveat that petitioner complete her associate's degree and continually search for employment, is consistent with this purpose.

¶ 29 Respondent next contends that the trial court misapplied the law when it reopened proofs *sua sponte* and then on its own motion reversed its prior ruling that maintenance was for a terminable period, making it reviewable. He maintains that section 2-1203 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2010)), governs the ability to reopen proofs, which the court may only do so on a party's motion and not on its own motion.

¶ 30 Section 2-1203 of the Code provides, in relevant part, that in all cases tried without a jury, any party may file a motion for rehearing, or a retrial or modification of the judgment or to vacate the judgment or for other relief. 735 ILCS 5/2-1203 (West 2010). A motion filed pursuant to section 2-1203 is a motion to reconsider. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078-79 (1007). A motion to reconsider is a separate action from

seeking to reopen proofs. *General Motors Acceptance Corp.*, 374 Ill. App. 3d at 1077-79. The trial court's decision to reopen proofs is within its discretion, and will not be reversed absent an abuse of that discretion. *General Motors Acceptance Corp.*, 374 Ill. App. 3d at 1077. Here, respondent contends that the court misapplied the law where it reopened proofs *sua sponte*, and then reversed its decision on its own motion, and also abused its discretion in allowing the proofs to be reopened.

¶ 31 We observe that the record here shows that at the start of the hearing petitioner indicated that she was seeking reviewable maintenance, and when the court entered a terminable period of maintenance, she voiced her objection explaining that she could not continue on if she does not have a job. The court's decision to then reopen the proofs was not a *sua sponte* decision as it was reflective of what petitioner was seeking although she could not clearly articulate herself in proper legal terms as she was acting without the assistance of an attorney. Furthermore, we observe that respondent contradicts himself as he later indicates in his brief that the court "allowed [petitioner] to reopen proofs," and "granted [her] reopened proofs." Thus, the court did not reopen proofs *sua sponte*, nor did it reverse its decision on its own motion where petitioner insisted that she wanted reviewable maintenance. We, therefore, find respondent's claim to be without merit.

¶ 32 Moreover, and contrary to respondent's contention, the court did not abuse its discretion in reopening proofs. *Wade v. City of Chicago Heights*, 216 Ill. App. 3d 418, 440 (1991). After the court held that the maintenance would be terminable, petitioner informed the court that she

1-13-0004

could not continue on without maintenance if she did not have a job. The court then reopened proofs, and petitioner explained that she currently has free insurance, but when she receives more money, it will change her insurance eligibility. Petitioner's failure to emphasize to the court her dire financial straits if the maintenance was not deemed reviewable was mere inadvertence, respondent was not surprised or unfairly prejudiced by this, petitioner's emphasis of her dire financial situation if the maintenance was not reviewable was of utmost importance to her case, and no cogent reason existed to justify denying the request. *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141 (2004). Accordingly, we find no abuse of discretion by the court in reopening proofs (*Wade*, 216 Ill. App. 3d at 440-41), especially where respondent then further cross-examined petitioner.

¶ 33 In light of the foregoing, we affirm the order of the circuit court of Cook County.

¶ 34 Affirmed.