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FIRST DIVISION
July 11, 2016

Nos. 1-15-1357 & 1-15-2561(Consolidated)
2016 IL App (1st) 151357-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MANAL AREF,)	
)	Appeal from the
Plaintiff-Appellee / Cross-Appellant,)	Circuit Court of
)	Cook County.
v.)	12 D 530815
)	
SHARIF AREF,)	Honorable
)	Patrick Murphy,
Defendant-Appellant / Cross-Appellee.)	Judge Presiding.
)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: Trial court abused its discretion when it denied husband's motion to reopen proofs based on circumstances that occurred after trial but before judgment for dissolution of marriage was entered; trial court did not abuse its discretion when it denied husband's oral motion for sanctions. Affirmed in part, reversed in part, and remanded for further proceedings.

¶ 1 This appeal and cross-appeal stem from a judgment for dissolution of marriage.

Defendant Sharif Aref (Sharif) argues on appeal that the trial court abused its discretion when it:

(1) denied Sharif's motion to reopen proofs, (2) awarded his wife maintenance, (3) awarded his

wife contribution for attorney fees, and (4) denied Sharif's motion for sanctions. Plaintiff Manal Aref (Manal) argues on cross-appeal that the trial court abused its discretion when by considering financial assistance from family when it attributed a specific income to her in determining maintenance. For the following reasons, we affirm in part and reverse in part the judgment of the circuit court and remand for reopening of proofs.

¶ 2

BACKGROUND

¶ 3 On October 30, 2012, Manal filed a complaint seeking dissolution of marriage from Sharif. In her complaint, Manal stated that the parties were lawfully married on December 27, 2001, in Palestine, and that they had three children during the course of their marriage. Sharif lived in New York in the property they acquired during their marriage, while Manal lived in Chicago with their three children, working at a grocery store. Manal alleged that she and Sharif had been living separate and apart since June 21, 2008. Manal alleged that Sharif was employed, and that Manal was in need of financial support and maintenance from Sharif. She requested child support for the minor children, and temporary and permanent maintenance.

¶ 4 On May 1, 2013, Manal filed a financial disclosure statement pursuant to Cook County Local Rule 13.3.1 (Cook Co. Circ. Ct. R. (June 1, 2011)). She claimed she received \$800 per month working at a grocery store, but that her monthly living expenses were \$3,129. At trial, Manal testified that some expenses had been left out of the disclosure, such as paying \$1,700 a year on school fees for the children, \$250 a year on school supplies, between \$45-50 a month in Internet costs, between \$45-50 a month on electricity, at least \$10 a month on trash removal, and an average of \$70 a month on natural gas heating. She testified that her six brothers were helping her financially.

¶ 5 On March 12, 2015, the court issued an order that stated the main issues for the court to decide were child support and maintenance. The court stated that the parties agreed that Sharif's net income was \$2,662 biweekly or \$69,212 a year, which is \$5,767 per month. The court stated that under the circumstances of this case, the court "believes that maintenance in the amount of \$1,800 per month for a period of 8 years is equitable." The court found that subtracting that number from Sharif's net income would create a new net income of \$3,967 per month, 32% of which was \$1,269 per month. Therefore, the court found that child support "shall" be \$1,269 per month and maintenance \$1,800 per month. The court stated that a "judgment pursuant to this order shall be prepared by the petitioner's counsel and presented to this court on April 20, 2015."

¶ 6 On April 17, 2015, Sharif filed a motion to reopen proofs based on facts occurring subsequent to the March 12, 2015, court date. Sharif alleged that he had received a demotion and attached to the motion was his most recent paystub indicating reduced pay. The pay stub reflected his net pay from March 23, 2015, to April 5, 2015, as \$1,351.88. The motion to reopen proofs was presented on April 20, 2015, the same day that was set for entry of the divorce judgment and the hearing on contribution.

¶ 7 On April 20, 2015, the court denied Sharif's motion to reopen proofs without a hearing. The court stated, "Well, I had assumed he was going to come in and file something like this. It's amazing how often this happens where the guy suddenly his salary gets cut immediately after the Judge enters an order about him paying support or maintenance. I'm going to deny the motion. He can file appropriate motion later."

¶ 8 Also on April 20, 2015, the circuit court entered a judgment for dissolution of marriage, awarding child support, maintenance, and contribution of attorney fees in favor of Manal. The court determined that Manal grossed \$2,000 a month in net income, which was determined from

her testimony that she earns \$800 a month from her employment at the grocery store, \$350 per month in government benefits, and "obtains financial assistance from her brothers." The court found that Sharif grossed \$99,996 per year or \$8,333 per month, and that his net income was \$69,212 per year, or \$5,767 per month. The court found that under the circumstances of this case, it was equitable for Sharif to pay \$1800 per month as maintenance for a period of eight years and \$1,269 per month as child support. Sharif was ordered to pay \$6,000 to Manal's counsel as contribution towards attorney fees. Sharif now appeals, and Manal cross-appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, Sharif contends that the trial court abused its discretion when it: (1) denied Sharif's motion to reopen proofs, (2) awarded his wife maintenance, (3) awarded his wife contribution of attorney fees, and (4) denied Sharif's motion for sanctions. On cross-appeal, Manal contends that the trial court abused its discretion by considering financial assistance from her family when it attributed a specific income to her in determining maintenance.

¶ 11 Sharif's Appeal

¶ 12 Sharif first contends that the trial court abused its discretion when it denied his motion to reopen proofs to present new evidence regarding his income. Manal responds that it would have been prejudicial to allow the motion, and that Sharif could file a petition to modify the judgment after judgment was entered.

¶ 13 Generally, the decision to deny a motion to reopen proofs is within the sound discretion of the circuit court, and unless the court abused its discretion, the court's decision will not be disturbed on review. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1120 (2004). "A court's decision to grant or deny such a motion rests upon the consideration of whether there is some excuse for the failure to introduce the evidence at trial, whether the other 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 cogent reasons for denying the motion." *In re Marriage of Drone*, 217 Ill. App. 3d 758, 766 (1991). Great liberty should be allowed in the matter of opening proofs when the case is tried before the court without a jury, as was the case here, and such leave should not be refused except for the most cogent reasons. *In re Marriage of Suarez*, 148 Ill. App. 3d 849, 858 (1986); *Harper v. Johnson*, 61 Ill. App. 3d 190, 193 (1978).

¶ 14 In the case of *In re Marriage of Suarez*, the husband filed a motion to reopen proofs prior to the entry of judgment of dissolution of marriage concerning evidence previously not known. Specifically, the evidence at issue was that a client had recently decided not to purchase its new radiators from the primary marital asset, a radiator company, resulting in a substantial loss of business to the company. The court found that evidence of the loss of radiator sales, which was not available at the time of the hearing, but which became known before the judgment of dissolution was entered, was a significant factor that had a substantial bearing on the valuation of the company as of the date of dissolution, and that it was an abuse of the trial court's discretion to deny the opening of proofs. *Id.* at 862.

¶ 15 In the case at bar, we similarly find that the court abused its discretion in denying Sharif's motion to reopen proofs. The date of the last hearing on the evidence for issues of maintenance was March 12, 2015. The alleged reason Sharif failed to introduce the evidence of his demotion at that time was because the demotion had not yet happened. Rather, the pay stub attached to Sharif's motion to reopen proofs was for the time period of March 23, 2015, to April 5, 2015. The pay date was April 10, 2015, and Sharif filed his motion to reopen proofs on April 17, 2015. Accordingly, while Manal may have been surprised by the new evidence, it appears that Sharif was not anticipating a demotion. Additionally, we cannot say that the evidence was not of

“utmost importance” in this case. *Drone*, 217 Ill. App. 3d at 766. In making its calculations for maintenance and child support, the trial court took into account his net income as of March 12, 2015, which was stated as \$2,662 biweekly. According to the pay stub attached to Sharif’s motion to reopen proofs, his new biweekly net income was \$1,351.88, which reflects a significant difference.

¶ 16 And finally, the last consideration is whether there were cogent reasons for denying the motion. *Harper*, 61 Ill. App. 3d at 193 (leave to reopen proofs should not be refused except for the most cogent reasons). Here, the trial court did not hold a hearing on Sharif’s motion, but rather stated: “Well, I had assumed he was going to come in and file something like this. It’s amazing how often this happens where the guy suddenly his salary gets cut immediately after the Judge enters an order about him paying support or maintenance. I’m going to deny the motion. He can file appropriate motion later.” We cannot say that these statements qualify as “cogent” reasons for denying Sharif’s motion to reopen proofs. Accordingly, after reviewing each of the factors for consideration, we find that the trial court abused its discretion in denying Sharif’s motion to reopen proofs.

¶ 17 Manal nevertheless contends that this case is similar to *Drone*, 217 Ill. App. 3d at 766, and that the motion to reopen proofs was properly denied. In *Drone*, the court found that the trial court had not abused its discretion in denying the respondent’s motion to reopen proofs for the hearing of additional evidence. *Drone*, 217 Ill. App. 3d at 767. The date of the last hearing on the evidence for issues of maintenance was July 20, 1989. Following the hearing and before the court entered judgment, the respondent submitted to the court information about his pension. Both parties were given two weeks to submit arguments and memorandums of law to the court. The petitioner submitted hers on October 5, 1989, but respondent did not file his until December

14, 1989. *Id.* On November 3, 1989, respondent filed his motion to reopen proofs, stating that he would lose his job sometime within the two weeks following December 11, 1989. On appeal, the court found that if the trial court had granted respondent's motion to reopen proofs, the petitioner would have been unfairly prejudiced, and that there were cogent reasons for denying the motion, such as: (1) granting the respondent's motion would cause undue delay in resolving the case, (2) respondent had recourse in that he could file a petition to modify the judgment after it was entered, and (3) respondent was an able-bodied man and there was no reason to presume that he would be unable to find alternative employment that would enable him to meet his legal obligations. *Id.*

¶ 18 In *Drone*, the respondent had not yet lost his job. The court found that he could file a petition to modify the judgment if his circumstances changed after judgment was entered. In the case at bar, however, Sharif's circumstances changed before the judgment for dissolution was entered. Accordingly, we find that given the equitable nature of the proceeding, the time at which the motion to reopen proofs was made (before the final order), and the substantial difference between the previous net pay and the current net pay, we conclude that the motion to reopen proofs should have been granted. We note that not every post-hearing change requires reexamination, or an evidentiary hearing, but that here the difference in pay was substantial and a failure to reopen proofs was, in our view, an abuse of discretion.

¶ 19 Sharif also contends that the trial court abused its discretion when it ordered Sharif to pay \$6000 to Manal's counsel as contribution towards her attorney fees. Because an award of attorney fees in a divorce proceeding requires the trial court to take into consideration "the income and property of each party," we find that the contribution award should be reconsidered after the reopening of proofs. 750 ILCS 5/501(c-1)(1)(A) (West 2014). Accordingly, the

judgment concerning maintenance, child support, and contribution will be vacated and the cause remanded for rehearing to reconsider maintenance, support, and contribution in light of the evidence presented in Sharif's motion to reopen proofs. See 750 ILCS 5/504(a)(1) (West 2014); 750 ILCS 5/505 (West 2014).

¶ 20 Sharif's final argument on appeal is that the trial court abused its discretion in denying his motion for sanctions. Sharif claims that he made an oral motion for sanctions against Manal for failing to provide him with an updated Rule 13.3.1 financial disclosure statement. According to the trial transcript, Sharif's counsel stated that the trial court had ordered the parties to exchange updated financial disclosures, and requested the trial court to enforce that order, or in the alternative, to impose sanctions pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002), to bar Manal from testifying. Manal's counsel then responded at trial that Manal's financial disclosure had been submitted. The trial court asked when the last financial disclosure had been made, and Manal's counsel answered that it had been submitted in May 2013, "and my client will be testifying to her income and expenses and using that disclosure to do so." The trial court responded, "Okay. So then we will proceed." Sharif contends that Manal then testified as to additional costs not indicated in the disclosure statement that she was able to pay for, as well as the purchase of a \$17,000 vehicle. Sharif argues that he was forced to rely on the testimony of Manal at trial, without any written financial disclosure containing her expenditures from May 2013 to the time of trial.

¶ 21 Rule 219(c) authorizes a trial court to impose a sanction upon any party who unreasonably refuses to comply with any provisions of the discovery rules or any order entered pursuant to Illinois Supreme Court rules. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). The decision to impose a particular sanction under Rule 219(c) is within the discretion of the trial court, and thus,

only a clear abuse of discretion justifies reversal. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). In the case at bar, we cannot say that the trial court abused its discretion in denying Sharif's motion to impose sanctions on Manal for failing to submit an updated disclosure statement since her counsel indicated that she would be relying on the 2013 disclosure statement during her testimony. We note, however, that we see from the transcript that Manal testified as to additional costs she had incurred since the filing of the May 2013 disclosure statement. Upon remand, we think it would be wise for Manal to submit an updated disclosure statement to reflect any additional costs she had between the original disclosure statement and the date of trial.

¶ 22 Cross-Appeal

¶ 23 On cross-appeal, Manal contends that the trial court abused its discretion in considering financial assistance she received from her brothers as income when deciding maintenance. Because we have reversed the trial court's judgment in regards to maintenance, this issue need not be addressed on appeal. However, when appropriate, a reviewing court may address issues that are likely to recur on remand in order to provide guidance to the lower court and thereby expedite the ultimate termination of the litigation. *Pielet v. Pielet*, 2012 IL 112064, ¶ 56. Because this issue is likely to recur on remand, we briefly address it here.

¶ 24 Manal argues that while she received financial assistance from her family, the assistance was considered a loan that she would have to pay back, and not a gift. *In re Marriage of Rogers*, 213 Ill. 2d 129, 137 (2004) (gifts are considered income); *In re Marriage of Tegeler*, 365 Ill. App. 3d 448, 458 (2006) (in general, loans should not be considered income). The findings of a trial court as to net income are within its sound discretion and will not be disturbed absent an abuse of discretion. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 657 (1998).

¶ 25 Manal testified at trial that she had six brothers, and that they paid the debt on her car that she recently purchased, and promised her she would never be in debt. Manal admits in her brief that neither party "presented testimony as to the amount of assistance [Manal] actually received from family or that it was steady and dependable." The trial court found that Manal grossed approximately \$2,000 per month, which was "determined from [Manal's] testimony that she earns \$800 per month from her employment with her brother, \$350 per month in government benefits, and obtains financial assistance from her brothers." We do not think that the trial court abused its discretion by including financial assistance from family members as part of Manal's income.

¶ 26 The only evidence that Manal presented to show that the brothers' assistance was a loan was when she stated that she gets extra money from her brothers and that they "consider that as a debt for the future." However, she also testified that her brothers paid for most of her car and had been making payments on her behalf for the remainder of what she owed to the bank. She also testified that her brothers "promise[d] that they will help me with any debt to whatever." Because Manal's testimony was contradictory, we defer to the trial court, as it is the trial court's role to determine the credibility of the witness and the weight to be given the evidence. *In re Marriage of Johnson*, 215 Ill. App. 3d 174, 180 (1991). Accordingly, we would not say that the trial court abused its discretion in finding that the financial assistance from Manal's family constituted a gift rather than a loan, and was thus properly considered income.

¶ 27 **CONCLUSION**

¶ 28 For the reasons stated above, the judgment of the circuit court of Cook County is reversed in part, and the cause is remanded for further proceedings consistent with this opinion.

¶ 29 Affirmed in part; reversed in part. Remanded for further proceedings.