

No. 1-15-2199

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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*In re* MARRIAGE OF )  
 ) Appeal from the  
STACY JO SHANE, ) Circuit Court of  
 ) Cook County  
 )  
Petitioner-Appellant, )  
 ) No. 11 D2 30624  
v. )  
 )  
SCOTT SHANE, ) Honorable  
 ) Jeanne M. Reynolds,  
Respondent-Appellee. ) Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Affirming the financial portions of the marital dissolution order.

¶ 2 The circuit court of Cook County entered a judgment for dissolution of marriage (dissolution order) dissolving the marriage of petitioner Stacy Jo Shane (Stacy) and respondent Scott Shane (Scott) and addressing financial and other matters. Stacy appeals from the financial portion of the dissolution order. As discussed below, the judgment of the circuit court is affirmed.

¶ 3

### BACKGROUND

¶ 4 Stacy and Scott married in 1998, and have three minor children: son Jordan (born December 30, 1999), son Cole (born December 11, 2001), and daughter Paige (born January 3, 2004). In October 2011, Scott obtained an *ex parte* order of protection against Stacy while she was hospitalized with mental health and substance dependence issues. She initiated dissolution proceedings and filed a petition for temporary and permanent child support and maintenance in January 2012. At that time, Stacy had successfully completed residential and outpatient treatment programs and was residing in a sober living home. The order of protection proceedings terminated in early 2012, and Stacy's petition regarding child support and maintenance was continued.

¶ 5 The trial court entered multiple orders regarding Stacy's parenting time and other matters. On May 1, 2013, the parties executed and the court entered a joint parenting agreement and judgment. When the case proceeded to trial on multiple dates in June through November 2014, the sole witnesses were Scott and Stacy.

¶ 6

#### Scott's Testimony

¶ 7 Scott testified that he was 47 years old and in good health. A few years after they married, Scott and Stacy purchased a townhouse in Park Ridge, Illinois (the marital residence). Stacy moved out of the marital residence in October 2011. Pursuant to the joint parenting agreement, Scott had residential custody and Stacy had visitation with respect to their three children. Although Paige spent time with Stacy, their sons Jordan and Cole had not had visitation. As of the time of Scott's trial testimony – during the children's summer break – Paige was "in Stacy's custody" and the boys stayed with Scott.

¶ 8 Years earlier, Scott dropped out of college to "help run the family business" after his

father was injured and was unable to work. Scott currently works between 50 and 55 hours per week as a manager at the 80-seat "hot dog" restaurant owned by his father. Scott testified that he was not an owner of the restaurant and did not know whether he would own the restaurant in the future. For most of the year, he received a weekly net paycheck of approximately \$775 and a weekly cash payment of \$750 from the restaurant. Other than life insurance, Scott did not receive benefits through his employment. He had no health insurance.

¶ 9 Scott testified that the balance on the mortgage on the marital residence was \$235,000, and the balance on a home equity line of credit was approximately \$69,000. The monthly homeowner's insurance cost approximately \$100, the monthly assessment was \$265, and the annual real estate taxes totaled approximately \$7,000 or \$7,500. He paid approximately \$2,450 per month to the mortgage company, including an amount for real estate taxes. Scott estimated the value of the marital residence at \$285,000, but noted that the home needed significant work, including certain repairs mandated by the townhouse owners' association.

¶ 10 Scott estimated his monthly bills to include: a \$260 telephone bill; a \$165 cable bill; a \$396 automobile payment; \$417 in clothing; \$30 for the children's medical insurance; and \$1,500 in food and groceries. Scott testified that the family usually dines out because he "cook[s] all day long." He made periodic payments for his children's dental and orthodontic care, *e.g.*, for Cole's braces, which cost \$5,950. Scott "guesstimate[d]" that his monthly expenses for his children's sports equipment and participation in travel hockey and baseball were \$1,117. Monthly entertainment expenses – "movies and stuff like that" – were \$433.

¶ 11 Scott paid certain bills with tax refunds or by money orders he purchased with cash at a currency exchange; he did not deposit cash into the bank. He charged other expenses to his credit cards; his credit card balances totaled approximately \$30,000 at the time of trial. His debts

also included \$16,000 he had borrowed from his parents for attorney fees and for the fees of the court-appointed children's representative, plus \$42,000 he continued to owe to his attorney.

Scott and Stacy had established college savings plans with modest balances for the benefit of Jordan and Cole, but not Paige, because they "could only afford to open up two."

¶ 12 Discussing their separation, Scott testified that he had not covered any of Stacy's expenses outside of the marital home, except he briefly paid for her leased automobile. Scott paid for all expenses relating to their two sons. Stacy covered some of Paige's expenses, including clothing, food, and softball expenses. Stacy had not paid child support in the prior three years, nor had she contributed to the mortgage on the marital residence.

¶ 13 Scott indicated that Stacy ceased her employment at Noodles & Company in October 2011, due to her substance abuse. At the time, Stacy's yearly salary was \$34,000 plus bonuses. Scott testified that a drug dealer had "her card, her credit card in both of our names and was swiping her card to live off." Scott estimated that her drug dealer had spent "five, six, \$7,000 easy," which represented a portion of the credit card indebtedness. Scott also testified that he repaid amounts Stacy had stolen from multiple parties.

¶ 14 Stacy's Testimony

¶ 15 Stacy testified that she was 42 years old and in good health at the time of trial. In October 2011, she was hospitalized for ten days. The doctors prescribed new medications for her mental health issues; her prior medications had been ineffective. The hospital found barbiturates in her system, although Stacy testified that her "drug of choice" had been cocaine. After the hospitalization, she successfully completed a 28-day program at a counseling center in Wisconsin and then a 90-day program at a treatment center in Addison, Illinois. She moved into a "three-quarter house" on the Addison facility premises, where she was subject to periodic drug

testing and attended counseling. Scott did not visit Stacy while she was in treatment nor did he offer to pay for any of her expenses.

¶ 16 In July 2012, Stacy moved in with her mother at her mother's boyfriend's house; her mother paid for her food and other expenses. In September 2014, Stacy moved to a three-bedroom apartment in Des Plaines, Illinois. The monthly rent, including parking, on the Des Plaines apartment was approximately \$2,700, and she shared the apartment with a family friend. Paige had her own bedroom. Stacy's mother provided the security deposit and served as guarantor on the lease, and Stacy's roommate paid a third of the rent and utilities. At the time of her trial testimony, Stacy generally had custody of Paige from after school on Thursday until Monday morning. Stacy served as a "room parent" for Paige's class, volunteered for her school events, and took her to activities such as softball and dance classes.

¶ 17 When she married Scott in 1998, Stacy had earned a two-year associates degree. She returned to college at Roosevelt University (Roosevelt) in fall 2012, studying psychology. She graduated in July 2014, with a bachelor's degree. Stacy's mother loaned her approximately \$14,000 for tuition. Stacy applied for a master's in business program at Roosevelt that same summer. She testified that she would complete the program in three years. Stacy decided to study business "[t]o use the knowledge that I have gained over the past years and turn it more into a business focus where I can make a better life for myself; more money."

¶ 18 Stacy testified that she was employed at a restaurant shortly before her marriage. She resumed full-time employment in 2008 at Noodles & Company. She confirmed that her annual salary was \$34,000 plus bonuses before she vacated the marital residence in 2011. While at the Addison treatment center, Stacy returned to work in January 2012 as an assistant general manager at Noodles & Company after returning from a leave of absence. Shortly thereafter, she

"took a demotion down to a shift manager" working 30 hours per week because she "couldn't handle" the combination of the 45-hour weekly work schedule at the company, the requirements of the treatment facility, and her efforts to return to school. Although she remained a manager, she transitioned from a salaried position to hourly wages. She earned approximately \$16,000 in 2013.

¶ 19 When she voluntarily resigned from Noodles & Company in September 2014, her hourly wage was \$12.36. At the time of her trial testimony, Stacy was commencing employment with the Panera Bread catering team (Panera) at \$10 per hour, plus possible tips. According to Stacy, "[t]he career path is much better" at Panera because she could "grow within the company" and utilize her education. Stacy testified that the "hours are perfect for my schedule," *i.e.*, her school schedule and Paige's schedule.

¶ 20 Stacy's mother provided her with financial assistance to cover certain attorney fees, rent, furniture, and some of Stacy's and Paige's expenses. Stacy agreed to repay her mother between \$300 and \$500 per month, commencing one year after completion of her education. At the time of trial, she drove an automobile purchased by her mother. Stacy estimated that she owed her mother in excess of \$100,000. Stacy's sole credit card balance in her name only was approximately \$600 on a Gap Visa card. She owed significant amounts to her attorney.

¶ 21 Stacy had a checking account but no savings account or other investments. She agreed with Scott's estimation regarding the value of the marital residence and that the property was likely "underwater." Discussing the years she and Scott were married and lived together, Stacy opined that they were "never extravagant spenders," although she agreed "[f]or the most part" that they "live[d] from credit card to credit card." She testified that they did not own luxury vehicles but they dined out frequently at a "couple expensive but mostly family restaurants."

Scott's parents routinely paid for their shared meals; his parents also purchased items and covered other expenses relating to Jordan, Cole, and Paige.

¶ 22 According to Stacy, Scott's father owned the restaurant and the underlying real estate. Stacy had no papers or witnesses that would suggest that Scott had a present ownership interest in his father's restaurant. She testified, however, that she and Scott had discussed that their "future was in the business." According to Stacy, Scott told her that "we may not have a lot now, but that is what we can live on." Stacy knew Scott received weekly cash payments from the restaurant but believed the amount was significantly more than \$750. She estimated Scott's yearly income at \$120,000 or \$150,000.

¶ 23 Stacy testified that she had previously worked for Starbucks but was terminated after "taking extra tips" to repay certain debts. She confirmed that she was "previously in rehab before the most recent rehab."

¶ 24 After her separation from Scott, Stacy's mother had taken her and Paige on vacation to Puerto Rico, and Stacy took Paige to Florida. Stacy believed that her annual spending of \$3,000 on Paige's clothing was reasonable. Stacy testified that her sons were not ready to reestablish a relationship with her and that she had not paid child support or contributed toward her sons' expenses. She also had not contributed toward any household expenses for the marital residence since the separation.

¶ 25 Dissolution Order

¶ 26 In a dissolution order entered on July 9, 2015, the court dissolved the marriage and set forth various findings of fact and conclusions of law. Among other things, the court awarded Scott and Stacy joint custody of the children and incorporated their joint parenting agreement into the dissolution order. At the time of the dissolution order, Stacy had parenting time with

Paige but not with Jordan and Cole, by agreement of the parties. Scott was granted exclusive possession, title and interest in the marital residence and is responsible for the payment of the mortgage, the home equity line of credit, and related expenses. He was ordered to attempt to refinance the mortgage and the line of credit to remove Stacy's name. If he is unable to do so within 24 months, the marital residence will be sold, and the net profits or losses will be divided equally between Scott and Stacy.

¶ 27 The court denied Stacy's request for retroactive maintenance. The dissolution order further provided that "with regards to Stacy's request for rehabilitative maintenance, the Court will reserve the issue for two years." The court stated that "[n]o evidence was submitted as to Stacy's efforts to seek employment income commensurate with her new advanced education." Noting that she "will complete her master's education within the next two years," the dissolution order provides that "Stacy shall have two years from the entry of this Judgment to file her petition for review of rehabilitative maintenance."

¶ 28 The court ordered Stacy to pay child support commencing on August 1, 2015, in the amount of \$300 per month, which represents a downward deviation from 32% of her net monthly income. The dissolution order provided that upon completion of her master's degree or within 24 months thereof, Stacy shall seek full time employment commensurate with her skills and education. The order further stated that, "[u]pon Stacy obtaining full time employment, the issue of child support, contribution to unreimbursed medical expenses and educational expenses for the children shall be reviewed." The court ordered Stacy to continue to pay for Paige's extracurricular activities as she had paid in the prior three years.

¶ 29 The court denied Stacy's request for child support from Scott, noting that he "paid 100% of the marital debts, children's child support, unreimbursed medical expenses, education



expenses, and the boys' extracurricular activities since the parties separated." The court further stated that the marital home lacked equity, and Scott had been allocated the majority of the marital debts.

¶ 30 The dissolution order provided that Scott is solely responsible for the payment of the marital credit cards and for repayment of the personal loans from his parents. Stacy is responsible for the payment of her "Gap Visa, student loans (if any in the future), and her personal loans from her mother." The court denied both Scott's and Stacy's petitions for contribution toward their attorney fees. The dissolution order indicated that it was final and appealable; Stacy filed this timely appeal.

¶ 31 ANALYSIS

¶ 32 Challenges to Maintenance Rulings

¶ 33 Stacy challenges various rulings by the trial court relating to maintenance. First, she claims that the court erred "by failing to employ the maintenance guidelines which applied to this case since the judgment was entered in 2015 after the effective date of the guidelines."<sup>1</sup> Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides, in part, that "the

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<sup>1</sup> During closing arguments in November 2014, Stacy's and Scott's respective attorneys and the court discussed legislative changes to the Illinois Marriage and Dissolution of Marriage Act, effective January 1, 2015. Under the 2014 version of section 504 of the Act, a court had discretion to calculate maintenance without any statutory formula. After the 2015 amendment, section 504 provides that the court "shall first determine whether a maintenance award is appropriate, after consideration of all relevant factors, including" the factors set forth in the statute. The amended statute generally requires a court to apply a statutory formula for calculation of the amount and duration of maintenance once it has made the threshold determination that maintenance is appropriate. Stacy's attorney advocated for application of the 2015 version of the statute. The trial judge stated it was "well aware" of "the current provisions in the maintenance allocation as well as the proposed new maintenance review." Scott's counsel indicated he had objected to the application of the new statute but stated, in part, "I accept and I am fine with your understanding of its applicability and I am not worried about that." On appeal, both parties have cited post-January 1, 2015, versions of section 504. We apply herein the version in effect on the date of entry of the dissolution order.

court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just \*\*\*." 750 ILCS 5/504(a) (West Supp. 2015). The statute further provides that "[t]he court shall first determine whether a maintenance award is appropriate, after consideration of all relevant factors," including: the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance; the needs of each party; the present and future earning capacity of each party; any impairment of present and future earning capacity of the party seeking maintenance due to the party devoting time to domestic duties or having forgone or delayed educational or career opportunities due to the marriage; the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment; the standard of living established during the marriage; the duration of the marriage; the age and physical and emotional condition of both parties; tax consequences; contributions and services by the party seeking maintenance to the education and career of the other spouse; any valid agreement of the parties; and any other factor that the court expressly finds to be just and equitable. *Id.* Section 504(b-1) provides that "[i]f the court determines that a maintenance award is appropriate, the court shall order maintenance in accordance with" the guidelines set forth in the statute if the parties' combined gross income is less than \$250,000, "unless the court makes a finding that the application of the guidelines would be inappropriate." 750 ILCS 5/504(b-1)(1) (West Supp. 2015).

¶ 34 The dissolution order provides that "[t]he Court has reviewed all of the statutory factors as set forth in Section 504(a)" of the Act; the order enumerates the statutory factors. In denying Stacy's request for retroactive maintenance to the date of her petition for dissolution, the court stated that it considered, among other facts:

"Stacy's employment history; her health; that during the divorce proceeding, Stacy voluntarily reduced her hours to secure both her undergraduate degree and now her master's degree; that Stacy has little debt with the exception of sums alleged to be owed to her mother; that Stacy's expenses in excess of her income are paid; that Scott has been allocated the majority of the marital debts; the parties had been married for eleven years upon the filing of the divorce proceedings; that Scott always worked during the marriage; that Scott has paid for all of the marital expenses, child support, the children's education expenses, unreimbursed medical expenses and orthodontia expenses, and the children's extracurricular activities since October, 2011 without contribution from Stacy; that Stacy is now better educated than Scott; the allocation of the marital estate and that each party had no non marital estate; and each party's allocation of debts and non-marital debts."

¶ 35 Trial courts have wide latitude in considering what factors should be used in determining reasonable needs, and the court is not limited to the factors listed in the statute. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. No single factor is determinative of the issue of the propriety of a maintenance award once it has been determined that an award is appropriate. *Id.* The trial court's decision regarding the propriety, amount and duration of maintenance will not be disturbed absent an abuse of discretion. *In re Marriage of Roberts*, 2015 IL App (3d) 140263, ¶ 20. "An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful or unreasonable, or when its ruling rests on an error of law." *McClure v. Haisha*, 2016 IL App (2d) 150291, ¶ 20; see also *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32 (providing that a trial court abuses its discretion "only when no reasonable person would take the view adopted by the trial court"). The burden is on the party seeking reversal to establish an abuse of

discretion. *Roberts*, 2015 IL App (3d) 140263, ¶ 20. In the instant case, the trial court considered the statutory factors in denying the award of retroactive maintenance. Based on our review of the record, we conclude that such denial did not constitute an abuse of discretion.

¶ 36 "Rehabilitative maintenance may be granted if the receiving spouse has the present or future ability to become self sufficient or the ability to acquire skills that would allow employability at an appropriate income level, but to do so would require some time." (Internal quotation marks omitted.) *In re Marriage of Awan*, 388 Ill. App. 3d 204, 208 (2009). As to the issue of rehabilitative maintenance, Stacy argues on appeal – without any support – that "[i]n violation of the statute, the court reserving maintenance and *therefore finding that it was a maintenance case*, did not award current maintenance and did not explain why. Nor did the court explain why she deviated from the guidelines or even refer to the guidelines." (Emphasis added.)

¶ 37 We agree with Scott's contention that "the reservation of an issue is the trial court exercising its discretion to not make an award at that time." (Emphasis in original.) See *In re Marriage of Petersen*, 2011 IL 110984, ¶ 20. "As with other maintenance determinations, a trial court's decision to reserve jurisdiction on the issue of maintenance will not be disturbed absent an abuse of discretion." *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 168 (2005). See, e.g., *Roberts*, 2015 IL App (3d) 140263, ¶ 24 (holding that trial court "abused its discretion in denying petitioner maintenance outright and not reserving the issue of maintenance until a later date"); *In re Marriage of Zirngibl*, 237 Ill. App. 3d 1049, 1059 (1991) (trial court did not abuse discretion in reserving maintenance for a two-year period); *In re Marriage of Lord*, 125 Ill. App. 3d 1, 3-4 (finding no abuse of discretion where trial court reserved the issue of maintenance based on the wife's potentially debilitating medical issues); but see *In re Marriage of Marriott*,

264 Ill. App. 3d 23, 41 (1994) (finding six-year period of reserved jurisdiction to be "too long" and thus reducing the period to three years).

¶ 38 Furthermore, we view Stacy's contention that the trial judge did not "explain why she deviated from the guidelines or even refer to the guidelines" as misplaced. Section 504 provides that the trial court shall first determine whether a maintenance award is appropriate; if so, the court "may grant a temporary or permanent maintenance award." 750 ILCS 5/504(a) (West Supp. 2015). Because the issue of rehabilitative maintenance was reserved, the trial court did not need to reference the statutory guidelines regarding the calculation of the amount and duration of maintenance, or any deviation therefrom. See 750 ILCS 5/504(b-1) (West Supp. 2015).

¶ 39 Stacy also contends that "she testified that the master's program will take her at least three years [citation], yet the court only reserved maintenance for two years." At the time of her testimony – in October 2014 – she had already commenced the master's program. As the dissolution order was entered in July 2015, the court appears to have recognized that Stacy had completed a portion of the program at that time. We do not consider the trial court's decision to reserve maintenance for two years to be an abuse of discretion.

¶ 40 Citing *In re Marriage of Carpenter*, 286 Ill. App. 3d 969 (1997), Stacy further asserts that the trial court "should have analyzed whether *realistically* it is likely that Stacy would be able to support herself in some reasonable approximation of the standard of living established during the marriage, especially when the marriage was of long duration." (Emphasis in original.) In *Carpenter*, the appellate court concluded that the trial court abused its discretion in failing to order a permanent maintenance award to the wife. *Id.* at 974. In so holding, the appellate court noted that the wife's "earning potential and employment opportunities" were "severely limited" when she devoted her time during her 27-year marriage to domestic duties, "foregoing any

education, training, employment or career opportunities." *Id.* at 973. Furthermore, the wife's psychiatrist and therapist testified that her psychological condition would interfere with her ability to function in a work environment. *Id.* at 973-74. Unlike the wife in *Carpenter*, Stacy has not "long been absent from the labor market." *Id.* at 973. Stacy has worked since at least 2008.

¶ 41 Furthermore, Stacy's standard of living during her marriage was relatively modest, with the exception of frequent restaurant dining. She indicated that the marital residence was likely "underwater," that she and Scott had various debts, and that their respective parents provided financial support to the family. She further testified that "[f]or the most part," she and Scott lived "paycheck to paycheck." "[W]hether one is able to meet her reasonable needs and become financially independent is still set in the context of what the standard of living was during the marriage." *Brankin*, 2012 IL App (2d) 110203, ¶ 14. In the instant case, certain expenditures during the course of the dissolution proceedings – *e.g.*, a trip to Florida with Paige, her \$3,000 annual spending on Paige's clothes – do not appear consistent with any significant decline in Stacy's standard of living after her departure from the marital residence. In any event, we agree with Scott's observation in his appellate brief that "in a case with relatively no assets and all debt, neither party is going to enjoy the standard of living he or she enjoyed when they had dual incomes contributing to a shared lifestyle." Compare *Brankin*, 2012 IL App (2d) 110203, ¶ 12 (stating that "it would be inequitable to saddle [the wife] alone with a reduced standard of living, especially since [the husband] earns over \$30,000 a month" and lived in their expensive home).

¶ 42 Stacy contends that "there is an 'opportunity cost' to spouses such as Stacy who sacrificed their earning capability to help raise a family." The cases she cites, however, are inapposite. For example, in *In re Marriage of Drury*, 317 Ill. App. 3d 201, 205 (2000), the wife gave up her

teaching career early in her marriage to take care of the marital home and raise the children. *Id.* When she returned to a teaching position 25 years later, she secured a nontenured position funded by a one-year grant. *Id.* It was undisputed that if she worked all of the years she stayed at home, her salary would be much greater, she would be tenured, and she would have significant retirement benefits. *Id.* Conversely, her husband "had the opportunity, supported by his wife's decision to stay at home, to advance his career." *Id.* at 206. "As a result," the appellate court concluded, "he enjoys a present and future earning capacity that is substantially greater than that of his former wife, whose earning capacity was impaired by sacrificing her career to raise the family." *Id.* The court thus reversed the temporary maintenance award and remanded for entry of a permanent maintenance award. *Id.* at 211.

¶ 43 Stacy had worked for years at Noodles & Company prior to the initiation of her dissolution proceedings. She testified that she worked at Starbucks during her marriage and was employed at a restaurant shortly before her marriage. Unlike the wife in *Drury*, there is no clear indication that she forfeited career opportunities based on her domestic responsibilities during her marriage. During the course of the dissolution case, she reduced her income – through her voluntary demotion at Noodles & Company and her subsequent employment at Panera – as she pursued her educational and professional goals and presumably improved her long-term earning capacity. Unlike the *Drury* husband, Scott had a limited education and minimal career advancement. At the time of trial, he continued to work, as he had for many years, in his father's restaurant. Although we recognize the "opportunity cost" that spouses may incur, the record in the instant case does not support Stacy's contention that she "sacrificed [her] earning capability to help raise a family."

¶ 44 The dissolution order stated, in part, that "Stacy is fully supported by her mother and is

not currently in need of maintenance." On appeal, Stacy argues that the "trial court made a legal error in determining that Stacy had no present need for maintenance based on her mother helping her out." The sole support she cites for her contention is *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 205 (2011), wherein the appellate court held, in part, that "the trial court abused its discretion in assuming that public assistance can be a substitute for a spousal obligation." As an initial matter, the public policy concerns at issue in *Anderson*, such as preventing a spouse from becoming a public charge, do not readily apply in this case. Furthermore, there is no indication that the trial court "determin[ed] that Stacy's mother was a proper substitute for a spousal obligation," as Stacy suggests. The findings in the dissolution order reference the role of Stacy's and Scott's parents, *e.g.*, "Both parties have borrowed funds from their parents during the course of this litigation." Furthermore, the order provides that "[b]oth Scott and Stacy are currently capable of supporting themselves." Even assuming *arguendo* that the court improperly considered Stacy's mother's financial support in its ruling, we would nevertheless conclude that the trial court did not abuse its discretion. The trial court's decisions to deny retroactive maintenance and to reserve the issue of rehabilitative maintenance are otherwise supported by the record.

¶ 45 Finally, Stacy asserts that the trial court's finding that Scott testified credibly was against the manifest weight of the evidence. She contends that "[t]here were numerous examples of his not being candid or reporting accurately," *e.g.*, his "guesstimates" in his disclosure statement and his allegedly "illogical and incredible" reasoning for using currency exchanges instead of banks. She also contends, in part, that his income, "even if believed, is more than he initially represented." The trial court's ultimate determination to award maintenance will not be reversed absent an abuse of discretion; however, when a party challenges the court's factual findings, we



will affirm unless the findings were clearly against the manifest weight of the evidence. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1041 (2008).

¶ 46 It is "well-established that the credibility of the witnesses and the weight to be given to their testimony is for the trier of fact to decide, and a reviewing court may not substitute its judgment for that of the fact finder." *Anderson*, 409 Ill. App. 3d at 199. The dissolution order included at least one express finding regarding Scott's credibility: "Scott testified credibly that he works six days a week on average of 55-60 hours a week and has always been paid by weekly check and by cash since 1986." The court's factual findings also implicitly indicated its acceptance of certain portions of Scott's testimony. For example, the dissolution order provided that "Scott has no anticipated future ownership interest" in the restaurant. Conversely, the court appears to have expressed skepticism regarding aspects of Stacy's arguments. For example, the dissolution order provided that Stacy "had no collaborating evidence supporting her belief" that Scott's annual income was \$120,000 or greater, that she "was always aware" that Scott was "paid in both cash and by check" and that she had signed their joint tax returns until 2013. The trial judge was in the best position to judge the believability of the witnesses, including Scott. *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075, 1089 (2011). Although the trial court described his record-keeping as "disorganized and lax," the trial judge appears to generally have found Scott's testimony to be believable. Based on our review of the record, any express or implicit finding by the trial court that Scott testified credibly was not against the manifest weight of the evidence.

¶ 47 Denial of Child Support to Stacy

¶ 48 Stacy also contends that the court erred in denying her request for child support from Scott. "In Illinois, the support of a child is the joint and several obligation of both the husband

and the wife." *In re Marriage of Turk*, 2014 IL 116730, ¶ 14. "If the couple's marriage dissolves, the court may apportion child support obligations between them." *Id.* The standards governing court-awarded child support are set forth in section 505 of the Act. *Id.* "Child support is a matter within the sound discretion of the trial court, and this court will not disturb the trial court's determination absent an abuse of discretion." *In re Marriage of Deem*, 328 Ill. App. 3d 453, 457 (2002).

¶ 49 Our supreme court has recognized that "Illinois law does not confine the obligation to pay child support to noncustodial parents." *Turk*, 2014 IL 116730, ¶ 17. Section 505 of the Act expressly confers upon courts the option to "order *either or both parents* owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the support of the child, without regard to marital misconduct." (Emphasis added.) 750 ILCS 5/505(a) (West Supp. 2015); *Turk*, 2014 IL 116730, ¶ 16.

¶ 50 The dissolution order stated that Stacy sought child support in the amount of 20% of Scott's net income (see 750 ILCS 5/505(a) (West Supp. 2015)) solely for support of Paige. However, her exact position on appeal is unclear.<sup>2</sup> Stacy cites *In re Marriage of Turk*, 2014 IL 116730, ¶ 24, wherein our supreme court held that a trial court may order a custodial parent to pay child support to the noncustodial parent where warranted by the circumstances and the best interest of the child. The *Turk* court observed that, in certain instances, "a parent who is technically noncustodial may have visitation rights which place the child in that parent's care for periods that rival those of the custodial parent and at commensurate cost." *Id.* Unlike in *Turk* – wherein the noncustodial parent had an "extensive visitation schedule" (*id.*) – the record on appeal reflects that, despite the parties' custody arrangement, Stacy had limited to no parental

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<sup>2</sup> In her petition for child support filed in January 2012, Stacy requested that Scott be ordered to pay child support "pursuant to statutory guidelines for the three minor children."

contact with Jordan and Cole.

¶ 51 The *Turk* court also observed that "[i]f custodial parents were categorically exempt from child support obligations, the wealthier parent's resources would be beyond the court's consideration and reach even though the visitation schedule resulted in the child actually residing with the poorer parent for a substantial period each week." *Id.*, ¶ 25. Scott and Stacy appear to have comparable resources, and no significant disparity exists between Paige's care or lifestyle in either parent's household. The *Turk* court's concern that a child may suffer due to "instability resulting from having to live a dual life in order to conform to the differing socioeconomic classes" (internal quotation marks omitted) (*id.*, ¶ 26) of her parents is simply not at issue in the instant case. In sum, Stacy's reliance on *Turk* is misplaced.

¶ 52 Stacy also states in her appellate brief, "Even when used with respect to a child support obligor, requirements for imputing are strict." To the extent Stacy is suggesting that the trial court imputed income to her for purposes of its evaluation of child support matters, such suggestion appears inaccurate. Illinois courts have developed three primary factors to consider in determining when it is proper to impute income to a noncustodial parent: (1) the payor is voluntarily unemployed; (2) the payor is attempting to evade a support obligation; or (3) the payor has unreasonably failed to take advantage of an employment opportunity. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). The dissolution order expressly provides that "[a]lthough the Court could have imputed income to Stacy to at least the level of income she earned at Noodles prior to the [parties'] separation, the court declines to do so at this time."

¶ 53 In denying Stacy's request for child support, the trial court noted, in part, that Scott "paid 100% of the marital debts, children's child support, unreimbursed medical expenses, education expenses, and the boys' extracurricular activities since the parties have separated." Pursuant to

the dissolution order, Scott became solely responsible for the bulk of the marital indebtedness. As discussed above, we reject Stacy's arguments regarding the imposition of child support obligations on Scott, whether they relate solely to Paige or to all three children. We conclude that the trial court did not abuse its discretion in denying Stacy's request for child support.

¶ 54 Award of Child Support to Scott

¶ 55 The trial court made the following finding of fact in the dissolution order: "Scott seeks child support from Stacy in the amount of 32% of her net income," *i.e.*, the statutory guideline for support of three children. 750 ILCS 5/505(a)(1) (West Supp. 2015). The court further found that "Scott argues that Stacy is now better educated than he is and capable of finding full time employment to support herself *and pay child support for the three minor children.*" (Emphasis added). The court ordered Stacy to pay \$300 per month in child support to Scott and an additional amount if Stacy's gross income exceeds \$3,000 per month. On appeal, Stacy contends that "it is questionable whether the trial court properly awarded Scott child support in the absence of a proper pleading requesting that relief." As discussed below, we conclude that the award of child support to Scott was proper.

¶ 56 In his appellate brief, Scott does not cite any document in the record wherein he specifically requested child support. Instead, he directs us to language at the conclusion of various responsive filings he submitted to the trial court, requesting "other and further relief as this Honorable Court deems just and appropriate." He also cites various cases affirming decisions in marriage dissolution matters based on generic language in a party's prayer for relief. See, *e.g.*, *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1073-74 (2005) (affirming award of maintenance where petition for dissolution prayed for an order denying maintenance and "such other and further relief as the [c]ourt deems equitable and just"); *In re Marriage of Hochleutner*,

260 Ill. App. 3d 684, 691 (1994) (affirming award of maintenance to respondent where petitioner had requested in the prayer for relief in his petition for dissolution of marriage that respondent be barred from any maintenance).

¶ 57 We recognize that "[g]enerally the filing of a petition setting out the relief sought is a prerequisite to the granting of relief under the [Act]." *In re Marriage of Daniels*, 243 Ill. App. 3d 43, 46 (1993). See also *In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 306 (2004) (stating that a "circuit court's authority is limited to the relief sought in the pleadings"). Although not expressly requested by Scott, however, the issue of child support was squarely before the circuit court. In addition to the language cited by Scott in his prayers for relief, one of Stacy's pretrial filings included a request that the circuit court "make such other provisions regarding parenting, child support and visitation as it determines is appropriate." Furthermore, the multi-day trial in the instant case focused on the financial issues between the parties. Stacy and Scott provided extensive testimony and submitted other evidence of their respective financial positions. Finally, the plain language of Section 505 of the Act does not expressly require a petition, instead providing that "[i]n a proceeding for dissolution of marriage \*\*\*, the court may order either or both parents" to pay child support. 750 ILCS 5/505 (West Supp. 2015). The current \$300 monthly award of child support to Scott –representing a downward deviation from the statutory percentage of 32% – was properly before the circuit court and is fully supported by the record. The circuit court did not err in its award of child support to Scott as provided in the dissolution order.

¶ 58 Other Issues

¶ 59 Stacy contends that the trial court "disregarded the parties' stipulation that Stacy be held harmless on the mortgage and equity line obligations." She cites in *In re Marriage of Dunlap*,

294 Ill. App. 3d 768, 776-77 (1998), wherein the appellate court held that when "the parties in a dissolution action enter into a stipulation as to the value and division of some portion of the marital estate, the terms of that agreement are binding upon the court," unless the court finds the agreement to be unconscionable. Based on our review of the record, the provisions of the dissolution order addressing the disposition of the marital residence and related matters appear consistent with the statements of the court and the parties' respective counsel at the conclusion of the trial.

¶ 60 Stacy also contends that she "received basically no property, no maintenance, no child support, no attorneys' fees and then she was ordered to pay child support and maintain life insurance." Citing *Gaskin v. Goldwasser*, 166 Ill. App. 3d 996 (1988), she characterizes the "cumulative effect of all of the trial court's rulings" as a "punitive 'piling on' " against her. In *Gaskin*, the appellate court found that the cumulative errors committed during a dental malpractice jury trial warranted reversal. *Id.* at 1015. Even if we disregard the lack of similarity between the *Gaskin* facts and those of the instant case, Stacy's argument is largely misplaced. The sole significant property, *i.e.*, the marital residence, was awarded to Scott.<sup>3</sup> Indeed, the trial court has broad discretion in the division of marital assets. *Roberts*, 2015 IL App (3d) 140263, ¶ 13; *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 61. The dissolution order, however, provides that Scott is responsible for all expenses relating to the marital residence, including the mortgage and the home equity line of credit. Scott also is "solely responsible for payment of the marital credit cards[.]" Stacy discounts or overlooks the fact that the trial court assigned the vast majority of the couple's sizeable debts to Scott. See *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 23 (noting that a trial court has discretion to order one or

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<sup>3</sup> The parties agreed that Scott would be awarded a specified vehicle and the related indebtedness.

both parties be held responsible for marital debt).

¶ 61 Stacy further argues that the court improperly required her to obtain life insurance. The dissolution order provides that "[b]oth parties shall maintain \$100,000 of life insurance with the minor children as the sole beneficiaries of same and the other parent named as a trustee for the benefit of the minor children." We agree with Scott that "[a] trial court is vested with the authority to order a parent to provide life insurance for the benefit of [the] children." *In re Marriage of Osborn*, 206 Ill. App. 3d 588, 606 (1990); 750 ILCS 5/505(3)(f) (West Supp. 2015). *Cf. Brankin*, 2012 IL App (2d) 110203, ¶ 34 (stating that a trial court has discretion to award a form of security, such as life insurance, for a maintenance obligation). As noted above, a trial court abuses its discretion when its ruling is "arbitrary, fanciful, or unreasonable" or "rests on an error of law." *McClure*, 2016 IL App (2d) 150291, ¶ 20.

¶ 62 Although Stacy asserts that her health issues "likely made compliance impossible," she cannot point to any action of the trial court that was "arbitrary, fanciful, or unreasonable." There is no argument on appeal that Stacy attempted to obtain life insurance, but was unable to do so, nor is there any argument that the trial court heard any evidence concerning the likelihood of Stacy being able to obtain life insurance and chose to disregard that evidence. We further note that Stacy did not file a posttrial motion arguing that the expense was cost-prohibitive or that she was unable to obtain life insurance. A circuit court's ruling cannot be considered an abuse of discretion based on pure speculation as to the practicality of complying with the ruling. We thus affirm the portion of the dissolution order requiring both parties to maintain life insurance.

¶ 63 Finally, Stacy requests that any further proceedings on remand take place before a different circuit judge. As discussed above, we are not remanding this matter for any further proceedings. Even assuming *arguendo* it was not rendered moot by our disposition herein, we

would nevertheless deny her request. Although we have authority to reassign the matter to a new judge on remand (*id.*), Stacy has not presented any evidence of personal bias or prejudicial trial conduct that would overcome the presumption of the trial judge's impartiality. *Suriano*, 386 Ill. App. 3d at 494. "Allegedly erroneous findings and rulings by the trial court are insufficient reasons to establish that the court had a personal bias for or against a litigant." *Id.*

¶ 64

#### CONCLUSION

¶ 65 As stated above, we hereby affirm the dissolution order entered by the circuit court.

¶ 66 Affirmed.