

NOTICE
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2016 IL App (5th) 150225-U

NO. 5-15-0225

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
NELLENA M. PIER,)	Montgomery County.
)	
Petitioner-Appellant,)	
)	
and)	No. 14-D-14
)	
GALEN J. PIER,)	Honorable
)	Douglas L. Jarman,
Respondent-Appellee.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly considered former maintenance guidelines under the Marriage and Dissolution of Marriage Act in rendering its judgment where the hearing in this matter was held and evidence was closed prior to new maintenance guidelines taking effect. Although judgment was entered after new guidelines took effect, these substantive changes apply only prospectively and not retroactively. The trial court's award of maintenance and the time period for which it awarded maintenance was not against the manifest weight of the evidence.

¶ 2 This appeal arises from an entry of judgment for dissolution of marriage between petitioner, Nellena M. Pier, and respondent, Galen J. Pier. Petitioner and respondent were married on March 17, 2000, in Las Vegas County, Nevada, and divorced on March

31, 2015, in Montgomery County, Illinois. Two minor children were born as a result of the marriage: C.A.J.P. born November 25, 2001, and C.D.J.P. born August 22, 2004.

¶ 3 Pursuant to an agreed joint custody order entered December 4, 2014, the parties were awarded joint care, custody, control and education of their minor children with petitioner having primary physical custody of the children subject to reasonable visitation rights of respondent. The remaining issues in this matter proceeded to trial on December 5, 2014, and the trial court entered its order on January 28, 2015. The court awarded petitioner child support in the statutory amount of \$203.87 per week. The court also awarded maintenance to petitioner in the amount of \$66 per week for a period of 24 months.

¶ 4 Judgment for dissolution of marriage was entered on March 31, 2015, and was subsequently modified after petitioner filed a motion to reconsider on April 8, 2015. In her motion to reconsider, petitioner argued the court miscalculated respondent's income and "erred in failing to comply with the maintenance statute as amended." A hearing on petitioner's motion to reconsider was held on April 28, 2015, where petitioner presented exhibits containing revised calculations regarding child support and maintenance. Specifically, petitioner argued the court should have awarded \$164.04 per week in child support and \$291.09 per week in maintenance for a period of 8.4 years.

¶ 5 On May 11, 2015, the trial court entered its modified order which indicated the "new Illinois Spousal Maintenance Law does not apply to this case." Specifically, the trial court indicated the new law applies only prospectively and not retroactively. The court further acknowledged that it erred in calculating child support, and awarded child

support in the statutory amount of \$243.79 per week. The court also denied petitioner's request for attorney fees. On June 5, 2015, petitioner timely filed a notice of appeal.

¶ 6

ANALYSIS

¶ 7 Before we begin our discussion in this matter, we acknowledge that no brief was submitted by respondent, and petitioner's request for oral argument was dispensed with pursuant to Illinois Supreme Court Rule 352(a) (eff. Feb. 6, 2013).

¶ 8

I. Maintenance Guidelines

¶ 9 The first issue raised on appeal is whether the trial court erred in failing to apply the new maintenance guidelines pursuant to Public Act 98-961 under the Illinois Marriage and Dissolution of Marriage Act (Act) in rendering its decision regarding the parties' dissolution of marriage. Pub. Act 98-961 (eff. Jan. 1, 2015) (amending 750 ILCS 5/504 (West 2012)). It is undisputed that the hearing in this matter was held and the evidence was closed prior to the new guidelines taking effect (Dec. 5, 2014). It is further undisputed that the trial court's order was entered after the new guidelines took effect (Jan. 28, 2015). As we indicate above, the trial court found the new maintenance guidelines did not apply to this case, as the new law applied only prospectively and not retroactively. For the following reasons, we affirm.

¶ 10 Initially, we observe that the construction of a statute is a question of law which this court reviews *de novo*. *Hall v. Henn*, 208 Ill. 2d 325, 330, 802 N.E.2d 797, 799 (2003). Our supreme court has held that statutes which are silent on retroactive application are to be read using section 4 of the Statute on Statutes. *Caveney v. Bower*,

207 Ill. 2d 82, 95, 797 N.E.2d 596, 603-04 (2003). Here, the amendment to the maintenance statute in question is silent regarding retroactive application. Accordingly, section 4 of the Statute on Statutes governs.

¶ 11 Section 4 of the Statute on Statutes indicates the legislature has undoubtedly manifested its intent that statutory amendments which are substantive in nature will apply only prospectively, not retroactively. 5 ILCS 70/4 (West 2014). In relevant part, section 4 provides:

"No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding." 5 ILCS 70/4 (West 2014).

¶ 12 As our supreme court has indicated, "section 4 represents a clear legislative indication that the retroactive application of substantive statutory changes is forbidden." *Caveney*, 207 Ill. 2d at 95, 797 N.E.2d at 603. Thus, pursuant to section 4, statutory amendments "that are procedural may be applied retroactively, while those that are substantive may not." *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 406, 917 N.E.2d 475, 483 (2009). Here, the amendment to the maintenance statute is substantive in nature, as it

adds a standardized formula to the statute for computing the amount and duration of maintenance to be awarded in certain situations. Pub. Act 98-961 (eff. Jan. 1, 2015).

¶ 13 Because the amendment is substantive in nature and not procedural, it may only be applied prospectively and not retroactively. While we acknowledge the trial court's order was not entered until after the new maintenance guidelines took effect, the hearing in this matter was held and the evidence was closed prior to the new guidelines taking effect. For this reason, the trial court properly considered the former maintenance guidelines in rendering its judgment, as this matter transpired prior to the effective date of the new maintenance guidelines. Accordingly, the trial court did not err in failing to apply the new maintenance guidelines in rendering its judgment.

¶ 14 Petitioner argues the trial court would not have applied the law retroactively if it would have followed the amended maintenance statute. Specifically, petitioner asserts:

"Since the court's ruling did not affect any previous payments of maintenance made by [respondent] but only future payments, [its] order with regard to maintenance was prospective in nature and the new guidelines should have been applied by the trial court."

¶ 15 After careful review, we are unconvinced by petitioner's argument. Petitioner's argument ignores the fact that the hearing in this matter was held and the evidence was closed on December 5, 2014, prior to the new maintenance guidelines taking effect on January 1, 2015. The fact that the trial court's ruling, which was rendered after the new maintenance guidelines took effect, affected only future payments regarding maintenance

does not necessitate that the new guidelines should have been applied. Because this matter transpired prior to the new maintenance guidelines taking effect, the trial court properly applied former maintenance guidelines in rendering its judgment. Accordingly, we reject petitioner's argument.

¶ 16 Petitioner cites to several supreme court decisions in support of her argument: *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, 25 N.E.3d 570; *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 749 N.E.2d 964 (2001); *Dardeen v. Heartland Manor, Inc.*, 186 Ill. 2d 291, 710 N.E.2d 827 (1999). After review, we find these cases distinguishable from the case at bar.

¶ 17 Unlike the instant case, the cases cited by petitioner involve statutes in which the legislature plainly indicated the temporal reach or amendments to statutes which were procedural rather than substantive. Here, the amended statute is a substantive change. Moreover, the amended statute is silent regarding its temporal reach, which as we discuss above, means section 4 of the Statute on Statutes controls. For these reasons, we are unpersuaded by the decisions cited by petitioner.

¶ 18 Petitioner further argues that the change to the maintenance statute was procedural and not substantive in nature. Petitioner alleges that because the new maintenance guidelines did not change the substantive nature of the maintenance statute, the trial court erred in not applying the new maintenance guidelines pursuant to Public Act 98-961 (eff. Jan. 1, 2015) (amending 750 ILCS 5/504 (West 2012)). We disagree.

¶ 19 As we indicate above, statutory amendments that are procedural may be applied retroactively, while statutory amendments that are substantive may not. *Diocese of Dallas*, 234 Ill. 2d at 406, 917 N.E.2d at 483. For purposes of determining whether a statute is procedural or substantive and thus whether it applies retroactively, substantive law involves the rights underlying the lawsuit. *United City of Yorkville v. Village of Sugar Grove*, 376 Ill. App. 3d 9, 21, 875 N.E.2d 1183, 1194 (2007). In contrast, procedure encompasses pleading, evidence and practice, which entails those legal rules which direct the course of proceedings to bring parties into court and the course of the court after they are brought in. *United City of Yorkville*, 376 Ill. App. 3d at 21, 875 N.E.2d at 1194.

¶ 20 After careful consideration, we find the new law is substantive and not procedural. Public Act 98-961 adds a standardized formula to the maintenance statute for computing the amount and duration of maintenance to be awarded in situations where the "combined gross income of the parties is less than \$250,000 and no multiple family situation exists." Pub. Act 98-961 (eff. Jan. 1, 2015). Because this new provision addresses the rights underlying a dissolution proceeding, it is substantive and not procedural. Therefore, it may not be applied retroactively. Accordingly, we reject petitioner's argument.

¶ 21 **II. Manifest Weight of the Evidence**

¶ 22 Petitioner next argues that the trial court's award of maintenance and the time period for which it awarded maintenance were against the manifest weight of the

evidence. Specifically, petitioner alleges the trial court should have awarded a greater amount of maintenance for a longer period of time. We disagree.

¶ 23 One objective of maintenance is to terminate the financial interdependence of former spouses, if possible, while another goal is to allow an ex-spouse the time and resources necessary to achieve self-sufficiency. *In re Marriage of Keip*, 332 Ill. App. 3d 876, 878-79, 773 N.E.2d 1227, 1229 (2002). A trial court's determination of maintenance will not be altered by a reviewing court absent an abuse of discretion or a finding that the award is against the manifest weight of the evidence. *In re Marriage of Keip*, 332 Ill. App. at 879, 773 N.E.2d at 1229.

¶ 24 Section 504(a) of the Act indicates that a court is to award maintenance in an amount and of a duration as it deems just, after consideration of the following factors: (1) the income and property of each party; (2) the needs of each party; the present and future earning capacity of each party; any impairment of present and future earning capacity of the recipient spouse due to the devotion of time to domestic duties or forgoing opportunities because of the marriage; (3) the time necessary to enable the party seeking maintenance to acquire appropriate education, training and employment; (4) the standard of living established during the marriage; the duration of the marriage; (5) the age and physical and emotional condition of each party; (6) the tax consequences of the property division; any contribution and services by the recipient spouse to the other spouse; and (7) any valid agreement of the parties; and any other factor the trial court expressly finds to be just and equitable. 750 ILCS 5/504(a) (West 2010); *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 9, 967 N.E.2d 358).

¶ 25 When awarding maintenance, courts have wide discretion in considering what factors should be used in determining reasonable needs, and the trial court is not limited to the factors listed in the governing statute. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10, 967 N.E.2d 358. No single factor is determinative of the issue regarding the propriety of the maintenance award once it has been determined that an award is appropriate. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10, 967 N.E.2d 358. "When determining the amount and duration of maintenance, the trial court must balance the ability of the spouse to support himself [or herself] in some approximation to the standard of living he [or she] enjoyed during the marriage." *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10, 967 N.E.2d 358 (quoting *In re Marriage of Shinn*, 313 Ill. App. 3d 317, 322, 729 N.E.2d 546, 550 (2000)). To put it more simply, the trial court's job is to determine whether one party needs maintenance and, if so, whether the other party has the ability to pay. *In re Marriage of Shinn*, 313 Ill. App. 3d at 322, 729 N.E.2d at 550.

¶ 26 Here, in determining petitioner's maintenance award and the duration of maintenance, the trial court noted that petitioner's present and future earning capacity had been impaired because she "devoted time to domestic duties of raising the children." However, the court found that petitioner had the ability to seek full-time employment at the present time because the children were "old enough." Regarding the parties' financial situation following their separation, the court stated:

"While the dissolution will make it more financially difficult for both parties, it is not substantially more financially difficult for both parties, it is not substantially more difficult for one party than the other."

The court noted that petitioner has held a part-time job for several years and acquired a separate part-time job following the parties' separation. The court further indicated that both parties are young, healthy, and have the ability to become employable to the extent that they can support themselves.

¶ 27 After careful review, we cannot say the trial court's award of maintenance and the time period for which it awarded maintenance was against the manifest weight of the evidence. The court considered petitioner's needs in arriving at an adequate maintenance award and period of maintenance after determining petitioner had the ability to become employable and increase her earning capacity so she can support herself. Furthermore, we acknowledge that petitioner was awarded the parties' marital residence, a 2008 Chevy Uplander vehicle, a 1995 Coachmen Camper, and the sum of \$42,446.46 from respondent's 401k. Petitioner also received "most of the marital household furnishings" and \$243.79 per week from respondent for child support.

¶ 28 In light of the trial court's consideration of petitioner's needs and the foregoing awards which petitioner received as a result of the parties' dissolution of marriage, we find the court's maintenance award in the amount of \$66 per week for a period of 24 months was reasonable and not against the manifest weight of the evidence. Accordingly, we reject petitioner's argument.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Montgomery County is affirmed.

¶ 31 Affirmed.