

NOTICE
Decision filed 11/16/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 150296-U

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).

NO. 5-15-0296

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

| | | |
|--------------------------|---|-------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the |
| |) | Circuit Court of |
| SHARI SPURLOCK, |) | Union County. |
| |) | |
| Petitioner-Appellee, |) | |
| |) | |
| and |) | No. 11-D-30 |
| |) | |
| TIMOTHY L. SPURLOCK, |) | Honorable |
| |) | Mark M. Boie, |
| Respondent-Appellant. |) | Judge, presiding. |

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in awarding Wife rehabilitative maintenance and in denying abatement of support when Husband was between work contracts. The court also properly found Wife was entitled to contribution toward her attorney fees as well as reimbursement for dissipation of marital assets.
- ¶ 2 Husband, Timothy L. Spurlock, appeals the decision entered by the circuit court of Union County awarding Wife, Shari Spurlock, rehabilitative maintenance, attorney fees and reimbursement for dissipation of marital assets. He also appeals the denial of abatement of child support for those periods when he is unemployed. We affirm.

¶ 3 Husband and Wife were married in Missouri in 1989. In 1998, Wife moved to Illinois while Husband remained in Missouri. Even though the two no longer lived together, they still maintained a relationship, and as a result, a son was born to the parties in August of 2000. They also owned a house jointly in Illinois in which Wife and the parties' child lived all of the time, and Husband some of the time. At some point in the relationship, Husband stopped making the mortgage payments on the joint home, and no longer sent money to Wife for support. Wife moved in with her mother, as she could not make the mortgage payments by herself. In July of 2010, the parties lost the joint home in foreclosure. They separated thereafter, and in April 2011, Wife filed a petition for dissolution of the marriage. Wife works for public housing, earning \$27,603 a year. Because of her employment, Wife and her son were able to move into public housing in order to live on their own.

¶ 4 Husband resides in Missouri in a single family home titled in his name. Husband is also listed as the borrower on the deed of trust dated September 2008, but claims that the house really belongs to a female friend. Husband is an independent contractor with the federal government, serving in foreign fields on an advisory basis. Because of the type of work he does, Husband is out of the country a great deal of the time. According to Husband, he rents the basement of the Missouri home from his friend in order to have a place to stay when he is back in the country. He claims his friend, whose husband had recently passed away, requested his assistance in helping her get security for the purchase of a home. Husband signed a power of attorney for purposes of allowing her to co-sign the note on the house. He claims he only recently learned that the title was in his name

alone, and that his friend apparently placed the real estate solely in his name because of her financial problems. Husband further claims his friend makes the payments on the loan. Husband did not supply proof of the current status of the mortgage, nor did he produce anything from the bank establishing who actually has made the mortgage payments. Husband also did not produce any recent tax returns, depose his friend in support of his claims, or offer her testimony at the hearing. The record indicates, however, that the mortgage payments of \$1700 per month are current. Evidence also established that Husband transferred title to a Hummer to the same female friend some four months after Wife filed her petition for the dissolution of their marriage.

¶ 5 For the year 2011, at the time Wife filed her petition for dissolution of the marriage, Husband worked for Dyncorp, earning \$174,000. At the time of the dissolution hearing in 2014, Husband was again employed by the same company, for the contract rate of \$84,112. Husband did not produce any tax returns after 2011 to help establish his rate of pay for the years between 2011 and 2014.

¶ 6 Other evidence revealed that Husband also purchased a home in Columbia, Missouri, in September of 2008, in his name alone. Husband claimed that it was a 100% loan, with no money used for a down payment. This property was sold in 2012, allegedly at a short sale for a loss.

¶ 7 The parties stipulated to Wife having custody of the parties' son, with liberal visitation to Husband. The parties also stipulated to child support in the amount of \$901.60 per month based on Husband's last pay stub. At the time of the hearing, Husband owed \$4000 in back support. Husband had asked for an abatement of child

support for those periods when he was unemployed. Initially the court granted his request, but later vacated the order for abatement after taking into account Wife's objections.

¶ 8 After hearing all the evidence presented, the court continued the proceedings to give Husband additional time to submit documents pertaining to the mortgage on the Missouri house, as well as to offer further information regarding his salary. Husband failed to produce any additional documentation. The trial court subsequently awarded Wife rehabilitative maintenance in the amount of \$1000 per month for 5 years, plus \$2000 in attorney fees. The court awarded Husband the house titled in his name, as well as the Hummer. Because it appeared that marital funds were used to purchase the Missouri residence and the Hummer, as well as, potentially, the house in Columbia, the court concluded Husband's actions constituted dissipation of marital assets. The court specifically found that Husband's testimony was vague and questionable at best, and that he made attempts to conceal the true nature of the purchases. Husband was given several opportunities to submit additional documentation to counter the adverse inferences, but did not present the court with any supplemental evidence to the contrary. The court therefore awarded Wife \$15,000 for her portion of the marital assets used and dissipated by Husband. Adding in the child support arrearage, Husband's total, immediate obligation to Wife was \$21,000. The court ordered that if the sum of \$21,000 was not paid within 90 days after entry of the final judgment, the residence titled in Husband's name was to be sold, and the amount of \$21,000 was to be taken from the proceeds.

¶ 9 Husband appeals the court's award of rehabilitative maintenance to Wife, the award of \$2000 in attorney fees, and the order to reimburse Wife monies for dissipation of marital assets. Husband also argues the court abused its discretion in denying the abatement of child support for those periods when he is unemployed between contracts. Husband points out the parties had been living separate and apart for many years, and in light of his periodic employment as a government contractor overseas, and the general lack of a marital relationship between the parties, the distribution of assets awarded is not just or equitable.

¶ 10 We initially recognize that decisions of a trial court as to the distribution of assets in a dissolution of marriage as well as the award of maintenance are reviewed for an abuse of the court's discretion. See *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 633 N.E.2d 82 (1994). Under the circumstances presented, we find no such abuse of discretion.

¶ 11 Husband's first argument on appeal is that the court abused its discretion in denying the abatement of child support during those periods when he is not employed. *Glass v. Peitchel*, 42 Ill. App. 3d 240, 243, 355 N.E.2d 750, 754 (1976) (child support payments may be abated or reduced when inability to pay results from involuntary loss of employment). Husband also believes that the court placed too much focus on a single year's income in making its support and maintenance determinations. He contends, relying on *In re Marriage of Freesen*, that the court should not base its income findings upon outdated information which no longer reflects prospective income. See *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103-04, 655 N.E.2d 1144, 1148-49 (1995)

(where support-paying parent's income fluctuates significantly, trial court should consider three years prior income in determining the parent's prospective income for child support purposes). He asserts that his income is now about half as much as it was in 2011, and continues to decrease. Given the nature of his employment as an overseas contractor, he does not have income every month of the year, and as an independent contractor, he does not qualify for unemployment. After the expiration of an employment contract, he must go through the process of evaluation and securing new employment. Husband argues there is no evidence in the record showing that he is acting in bad faith simply because he is unemployed between contracts. The interruptions in employment are a necessary and integral part of his profession, and as a result, should be considered as an involuntary loss of employment for the purposes of awarding child support and maintenance. He therefore argues that the court should provide for abatement of his child support obligations when he has no income. As Wife points out, simply because Husband does not have a contract with the federal government for periods of time, does not mean he should not have to work. Their child does not stop eating or needing clothing, medical care, and school supplies simply because Husband chooses not to work between contracts. Husband is paid substantially well, especially compared to Wife's salary, for taking employment limited to set contract periods. It is the nature of the type of work Husband has done for many years and chooses to continue to do. At this point in his career, considering his lifestyle and obligations, Husband should know how to manage his finances to take into account any off-contract unemployment. This is especially true inasmuch as the parties stipulated to an amount of

\$901.16 per month for child support at the beginning of the hearing. Husband made no further objections to the child support obligation until this appeal. We also note that, at the time of the hearing, Husband was employed, and his attorney commented that Dyncorp offered an option for re-extension at the end of the year. While it was possible for Husband's income to have been averaged to perhaps reach a different child support figure, Husband failed to produce any other tax returns other than for the year 2011. See *In re Marriage of Freesen*, 275 Ill. App. 3d at 104, 655 N.E.2d at 1149. Accordingly, we find no error in the court's denial of abatement under such circumstances. Husband still has the ability to file a motion to decrease child support in the future should he ever become truly unemployed.

¶ 12 Husband next finds fault with Wife being awarded rehabilitative maintenance for a period of 5 years in light of the fact that the parties had already been living apart, with separate lives, for some 16 years. Husband points out that rehabilitative maintenance provides a spouse with the opportunity to adjust to life after a dissolution of marriage and to become self-sufficient. *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 35, 980 N.E.2d 1151. Husband claims maintenance in this instance would amount to nothing more than an unreasonable windfall to Wife since the parties already have separate and distinct lives, and have been supporting themselves for many years. There is little in the record regarding the parties' living standards or any other circumstances regarding the parties' lifestyle during the time they actually cohabitated. Husband therefore believes an award of maintenance would place Wife in a position beyond her current status, will give

her more discretionary income than him, and leave her well beyond self-sufficient, resulting in a disproportionate benefit to Wife.

¶ 13 The amount of maintenance awarded by the trial court is within its sound discretion and a reviewing court will not overturn that determination absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). The evidence reveals, for the year 2011 alone, Husband's income was over three times that of Wife's, who was forced to either live with her mother, or rent from public housing. She could have been enjoying a substantially different lifestyle had Husband been contributing to the parties' marriage instead of renting living space from another woman and buying her vehicles. Wife has been raising the parties' child alone for the majority of his life because of Husband's work absences. She has worked at the same job for some nine years, and still has student loans, as well as a car loan, plus expenses for their son. In making the award of maintenance, the court stated in the final order that all relevant factors had been considered prior to awarding maintenance. Again, we find no abuse of the court's discretion in this instance.

¶ 14 Husband next argues the lack of a hearing on the issue of attorney fees, along with little supporting evidence, resulted in an arbitrary decision to award Wife \$2000 towards her attorney fees, and amounted to an abuse of the court's discretion. Wife counters that Husband's counsel was put on notice that attorney fees were at issue when the petition for dissolution was filed. At the beginning of the hearing, counsel was again informed that attorney fees were at issue. No affidavit for attorney fees was submitted at the last hearing date scheduled by the court. The additional hearing date was set to allow

Husband to produce documentation in further support of his claims. Because Husband did not submit any supplemental documentation, no further hearing was necessary, and thus there was no opportunity to submit the affidavit for attorney fees until closing argument.

¶ 15 The parties were ordered to produce their closing arguments, in writing. Wife's attorney fees were presented as an attachment to her closing argument. Husband's closing argument was submitted after Wife's, and Husband did not object to the request for attorney fees, or question the amounts that had been paid. Clearly, Wife lacked the means to pay her attorney fees based on her income, and the fact that she was still owed \$4000 in past due child support. The allowance of attorney fees, and the amount awarded, are within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001). Again, we find no abuse of the court's discretion in this instance.

¶ 16 For his last issue on appeal, Husband argues the court erred in finding a dissipation of marital assets, and in ordering him to pay Wife \$15,000 for such dissipation. After hearing the evidence presented, it was the court's opinion that Husband's actions during the last years of the parties' marriage indicated dissipation of marital assets in that marital funds had been utilized to purchase two residences, and a Hummer. The properties and vehicle were bought without Wife's knowledge, and the funds that went into the purchases of the Missouri real estate and Hummer were used for the sole benefit of Husband for purposes unrelated to the parties' marriage. After a

preliminary showing of dissipation, the court gave Husband six weeks to gather any missing documents to prove otherwise, but he failed to respond. It was Husband's burden to show by clear and convincing evidence that there was no dissipation of marital funds. *In re Marriage of Dunseth*, 260 Ill. App. 3d at 830, 633 N.E.2d at 93. Yet, as the court stated, Husband's "testimony [was] vague and questionable at best." His attempts to conceal the true nature of his purchases were overshadowed by clear indications of dissipation of marital assets. Husband squandered an unknown amount of marital funds on assets that only he enjoyed, while failing to pay for the parties' joint home lost through foreclosure. We cannot say the court erred in finding dissipation under such circumstances. See *In re Marriage of Jerome*, 255 Ill. App. 3d 374, 394, 625 N.E.2d 1195, 1210 (1994); *In re Marriage of Jones*, 187 Ill. App. 3d 206, 233, 543 N.E.2d 119, 137 (1989). As a reviewing court, we should not reverse a trial court's finding of dissipation absent an abuse of discretion. *In re Marriage of Dunseth*, 260 Ill. App. 3d at 830, 633 N.E.2d at 93. We find no such abuse here.

¶ 17 For the forgoing reasons, we affirm the judgment of the circuit court of Union County.

¶ 18 Affirmed.