2017 IL App (1st) 150700-U

FIFTH DIVISION
February 24, 2017

Nos. 1-15-0700; 1-15-2775

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
WILLIAM POLITO,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 11 D 12125
v.	)	
	)	
DEBRA POLITO,	)	Honorable
	)	Leida J. Gonzalez Santiago
Respondent-Appellant.	)	and John Thomas Carr,
	)	Judges Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court regarding marital property distribution and maintenance is affirmed. The circuit court's judgment regarding contribution and one law firm's legal fees is reversed. The matter is remanded to the circuit court for further proceedings consistent with this order.

¶ 2 The instant appeal arises from the circuit court's entry of a judgment for dissolution of the parties' marriage. Respondent Debra Polito appeals the circuit court's allocation of the assets

and its award of reviewable maintenance and contribution towards her attorneys fees. Debra further appeals the circuit court's award of attorneys fees to her initial trial counsel where no petition for attorneys fees was filed and the circuit court made no finding on the reasonableness of the fees before entering a judgment in her attorney's favor. For the reasons that follow, we affirm in part, reverse in part, and remand the cause to the circuit court.

¶ 3 BACKGROUND

¶ 4 The record in the instant matter was extensive and, thus, only those facts pertinent to this appeal are discussed herein.

¶ 5 Trial

¶ 6 On December 22, 2011, William filed a petition for dissolution of marriage based in part on irreconcilable differences. Trial proceeded over the course of seven days: June 4, 2013, March 19-20, 2014, September 16-18, 2014, and December 9, 2014. At the time they testified William was 45 and Debra was 58. The evidence adduced at trial was as follows.

¶ 7 William and Debra met in the fall of 1996 and were married on January 7, 1997, in Beaufort, South Carolina. No children resulted from their union. At the time of their marriage, William had completed medical school and was fulfilling his duty to the United States Navy while Debra was working as a swim instructor at the naval base and had not completed high school. Shortly after they were married, William was deployed overseas where he resided for six months. Debra remained in South Carolina where she eventually acquired work as a property manager making $40,000 a year. After William's service overseas, the parties resided together in South Carolina until the summer of 1999 when William completed his military obligations and commenced a surgical residency program in Tucson, Arizona. The parties agreed that Debra would remain in South Carolina for a year so she could continue her employment and then move

to Arizona.

¶ 8 William's residency program lasted five years, from 2000 to 2005. Debra moved to Arizona in 2002 with her ailing mother who required twenty-four hour care. Debra, with William's agreement, did not obtain employment and instead took over the role as her mother's primary caregiver. William, Debra, and Debra's mother resided together through the completion of his residency program until 2005 when he moved to Houston, Texas for a fellowship. Debra did not move to Texas with William and instead remained in Arizona caring for her mother. While Debra resided in Arizona, William financially supported Debra and her mother. Debra, however, did receive some funds from the State of Arizona to provide for her mother's care.

¶ 9 Upon completion of his fellowship in 2006, William obtained a position as a cardiothoracic surgeon with a private practice group in the suburbs of Chicago, Illinois earning $175,000 a year. Despite receiving offers of employment with higher starting salaries in rural locations, William declined to accept these positions because he preferred to reside near Chicago. From 2006 until 2008 the parties had frequent discussions about Debra's mother being placed in an assisted living facility and Debra moving to Illinois. Debra, however, remained in Arizona to care for her mother. During this time, William continued to provide financial support for Debra and her mother.

¶ 10 In 2008, Debra's mother passed away and the parties again discussed the possibility of Debra moving to Illinois. Debra, however, indicated she would not move because of her responsibilities in Arizona, namely leases she had obtained on real property and debts she had acquired. In 2009, aside from paying for additional expenses requested by Debra, William also provided her with $3,500 to $4,500 a month. Bank statements from 2010 through 2011 were admitted into evidence which demonstrated William had distributed $88,551.97 and $90,259.29

to Debra, during those years respectively. According to Debra, the financial support William provided her was "very generous," however, despite receiving these funds, Debra would be overdrawn on her accounts on a monthly basis leading to fees of $100 to $1,000. Through 2009 to 2011, William and Debra continued their discussions regarding her moving to Illinois so they could consolidate their households, but, as Debra testified, she did not have adequate funds to move to Illinois.

¶ 11 In August 2010, Debra rented a six-bedroom, five-bathroom, eight-car garage home in Arizona. She was also paying rent for a separate residence where she stored her belongings. According to William, the leases entered into by Debra in August 2010, were signed and completed without consulting him. Debra also rented numerous storage units in South Carolina, California, and Arizona, some of which she had since the beginning of their marriage.

¶ 12 In the summer of 2010, with the intention of moving to Illinois, Debra assisted William in locating a larger apartment. In January 2011, with Debra's assistance, William moved into the 2,000 square foot apartment where he currently resides, paying $2,000 per month including utilities. Debra, however, did not move in with William and instead returned to Arizona after a few weeks. In May 2011, Debra visited William in Illinois and asked William to provide her with the funds to pay a past due bill for a storage facility in the amount of $11,700. William offered Debra $15,000 to use to either pay the storage facility bill or move to Illinois. According to William, he informed Debra that if she did not chose to move to Illinois, he would file for a divorce. Debra ultimately chose to pay the storage facility bill and in December 2011 William filed the instant action.

¶ 13 A month later in January 2012, Debra moved to Illinois with her friend Lois Mosby (Lois). Upon obtaining temporary orders for maintenance in the amount of $4,000 per month,

Debra acquired a lease for a three-story home in Woodstock, Illinois with a monthly rent of $2,900 not including utilities. According to Debra, Lois resided in the basement and paid $400 a month towards the rent. The temporary order further provided that William pay for Debra's health insurance, two storage unit rental fees, and a $2,000 security deposit.

¶ 14 Debra testified that, as of the time of trial, she was employed as a home health aide making $10 per hour. Although she had been employed at one time for 37.5 hours per week, her hours had decreased and she was currently working 25 hours per week earning $1,087 monthly. In addition, Debra testified she was currently receiving treatment from two psychologists for issues regarding situational depression and stress. Debra further testified that, while she had undergone two lumpectomies (but had not been diagnosed with cancer), she was healthy and willing to work full time.

¶ 15 Pursuant to Circuit Court of Cook County Rule 13.3.1, Debra's disclosure statement was admitted into evidence. The disclosure statement provided that her household expenses each month including rent, utilities, groceries, and dog food and grooming totaled $4,314. Her monthly transportation and medical expenses totaled $1,850, and her miscellaneous expenses were $758, including $400 for vacations. Her total monthly expenses were calculated at $7,322. Debra further testified regarding her debts, which she asserted totaled $73,744, and included, in part, doctor's bills ($8,460), an outstanding automobile loan ($16,000), and various personal loans ($32,000).

¶ 16 In regards to his income, William testified he currently earns $300,000 a year. William further testified that while he works five days a week and is on call every third weekend, he could earn more by working longer hours. In addition, William testified that he could "moonlight" as a surgeon for another practice group. According to William, he was, however,

currently satisfied with the number of hours he worked and his net compensation.

¶ 17 At trial, the marital property which was established consisted primarily of three retirement accounts acquired through William's past and current employment: (1) a Correll 401(k) (Correll account) valued at approximately $103,000; (2) a Charles Schwab Rollover IRA (Schwab IRA) valued at approximately $58,000; and a John Hancock 401(k) Savings Plan (Hancock account) valued at approximately $29,000.

¶ 18 Attorneys Fees

¶ 19 Prior to trial, numerous orders were entered by the circuit court directing William to pay Debra's interim attorneys fees. On June 4, 2013, Debra, through her original counsel Figiel Law Offices, Ltd. (Figiel), filed a petition for contribution towards her attorneys fees and costs pursuant to section 503(j) of the Act (750 ILCS 5/503(j)(West 2014)).

¶ 20 After trial had commenced, Figiel withdrew as counsel of record and Beermann, Pritikin, Mirabelli, Swerdlove, LLP (Beermann) was granted leave to substitute in as Debra's counsel. After withdrawing from the case, on July 31, 2014, Figiel filed a Petition for Setting Final Fees and Costs pursuant to section 508(c) of the Act (750 ILCS 5/508(c)(West 2014) in the amount of $16,216.85. On August 19, 2014, the circuit court entered an order indicating that unless otherwise agreed, Figiel's petition "shall be addressed at trial."

¶ 21 Thereafter the parties entered into two agreed orders regarding the disposition of specific marital property for the payment of the parties' attorneys fees, namely two retirement accounts. The agreed order of August 19, 2014, provided that the entire balance of the Schwab IRA was to be distributed to the escrow account held by William's attorneys and that 55% of the amount distributed from the Schwab IRA "shall be distributed equally as interim attorneys' fees pursuant to section 501(c-1) to Beermann firm and to Tzinberg firm." The parties also contemplated in

the agreed order that they would agree to utilize the Correll account instead of the Schwab IRA. According to the record, the Schwab IRA was not distributed pursuant to the terms of this agreed order.

¶ 22 On November 10, 2014, the parties entered into a second agreed order regarding the disposition of the retirement accounts. This agreed order provided that the Correll account was to be liquidated instead of the Schwab IRA. Thirty-five percent of the funds from the Correll account were to be held back for any future tax liabilities for 2014 and the remaining 65% was to be divided equally "between counsel for the Petitioner and counsel for the Respondent for attorneys fees."[1]

¶ 23 On December 9, 2014, the circuit court entertained closing arguments in the matter and a hearing on Figiel's petition for setting final fees and costs. Attorneys from Figiel and Beermann were present in addition to William's counsel. Debra's current counsel Beermann asserted that they were not contesting the reasonableness of Figiel's fees, but that it was "a contribution issue" and that "there should be a disproportionate allocation for the payment of those fees." In her proposed judgment for dissolution Debra requested that William be responsible for the entirety of attorneys fees incurred in the matter and that a judgment in the amount of $40,000 issue against William and in favor of Debra for contribution.

¶ 24 The Judgment for Dissolution

¶ 25 On February 20, 2015, the circuit court entered a judgment for dissolution of the parties' marriage. In regard to division of the marital assets, after examining all the relevant factors set forth in section 503 of the Act (750 ILCS 5/503 (West 2014)), the circuit court ordered the three retirement accounts to be distributed 50% to William and 50% to Debra. The parties were to

[1] Pursuant to this order, Debra executed a qualified domestic relations order regarding the Correll account. The funds in the Correll account, however, were not deposited into the escrow account until after the judgment for dissolution had been entered.

retain ownership of their respective automobiles and personal property. Debra was awarded 100% of the contents of all the storage units.

¶ 26 As for the marital debts, the circuit court found there was $73,744 in marital debts as listed by Debra in her proposed judgment and ordered William to contribute $10,000 towards those debts. Debra was found to be responsible for the remaining debt listed.

¶ 27 In the judgment, regarding maintenance, the circuit court found that the evidence established that Debra was in need of maintenance from William based on the circuit court's weighing of the factors set forth in section 504 of the Act (750 ILCS 5/504 (West 2014)). Specifically, the circuit court stated it considered (1) the disparity in William's income as compared to Debra's, (2) the allocation of marital property and debt, (3) Debra's needs, (4) Debra's "somewhat limited present and future earning capacity" and William's present and future earning capacity, (4) the standards of living established by the parties during the marriage, (5) the parties' ages and their physical and emotional conditions, (5) the tax consequences of the property division upon the respective economic circumstances of the parties. The circuit court then considered the type of maintenance and what amount it would award Debra. In making this determination, the circuit court found William's gross income to be $300,000 and imputed "a minimal income to DEBRA of $10.00 per hour for working 30 hours per week for Monarch Health Care, as she did in 2014, for a full year brings her gross income to $15,600 per year." The circuit court then calculated that Debra "is capable of earning no less than $25,000.00 gross per year once she is employed full time." Based on the parties' incomes, the circuit court declined to set a maintenance award pursuant to section 504(b-1)(1) of the Act (750 ILCS 5/504(b-1)(1) (West 2014)) because their combined gross income exceeded $250,000.

¶ 28 The circuit court also found that Debra "has not suffered any impairment of her present

and future earning capacity due to her devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage." In addition, the circuit court considered that Debra's testimony "did not indicate that her current part-time employment requires a higher [educational] degree or additional training" and that Debra "chose not to" work, but that prior to the marriage she had maintained full-time employment. Based on these findings, the circuit court concluded that Debra would be able to support herself through appropriate full-time employment. The court further found that Debra "was voluntarily earning zero income (exclusive of her monthly maintenance award) despite WILLIAM's two pending Motions to Compel Respondent to Seek Meaningful Employment and to Maintain a Job Diary." Additionally, the court found that Debra "has a history of being fiscally irresponsible and has blatantly disregarded the responsibility of budgeting martial funds."

¶ 29 In determining the amount of the maintenance award, the circuit court found that Debra's 13.3 Disclosure Statement "produced inflated 'needs' (*i.e.* $400/month for clothing, $400/month for vacations, $200.00/month grooming, $2,500.00/month rent, plus all utilities) which are therefore not reasonable or legitimate." After considering the factors and its findings, the circuit court found that it was appropriate for William to pay Debra reviewable maintenance in the amount of $4,500 per month, with the maintenance obligation subject to review four years after the date of the judgment for dissolution of marriage.

¶ 30 Regarding attorneys fees the circuit court ordered as follows:

> "This Court finds that each party owed his/her attorneys significant balances at the time they entered into the Agreed Order on August 19, 2014, which ordered the liquidation of WILLIAM's Charles Schwab retirement account, of which 55% was to then be split

> evenly between both parties' attorneys. The Agreed Order designated these retirement funds as interim attorneys' fees pursuant to Section 501(c-1) of the IMDMA. Accordingly, each party elected to pay for his/her then outstanding attorney fee balance with his/her share of the Charles Schwab retirement account. This Court has calculated *supra* that there should be approximately twenty six [*sic*] thousand one hundred dollars ($26,100.00) remaining in the Charles Schwab IRA. Each party will receive fifty percent (50%) of the remaining account balance, which amounts to $13,050.00 dollars each and said amounts shall be used solely for attorneys fees. This additional $13,050.00 dollars shall constitute WILLIAM's total contribution as and for DEBRA's attorneys' fees pursuant to Section 503(j)."

The judgment did not reference the November 10, 2014, agreed order, but instead only referenced and incorporated the terms of the August 19, 2014, agreed order. The circuit court did not address Figiel's attorneys fees in the judgment for dissolution.

¶ 31 Postdissolution Litigation

¶ 32 Thereafter, on March 4, 2015, the circuit court found Figiel's attorneys fees to be fair and reasonable and entered a judgment in Figiel's favor against Debra in the amount of $15,999.85. The order further provided that "[t]here shall be no distribution of the funds held in deposit in *** [the] escrow account until further order of court."

¶ 33 On March 19, 2015, Beermann filed a motion to withdraw as Debra's counsel and requested leave to file a petition for setting final fees and costs against Debra. The circuit court granted Beermann's request to withdraw on March 25, 2015, but did not address Beermann's request for leave to file a petition for setting final fees and costs, although the order did indicate that the matter was continued for status regarding the distribution of the escrow account.

¶ 34 Subsequently both Figiel and Beermann filed petitions for leave to intervene in the dissolution action so as to obtain a court order disbursing the funds being held in escrow to them for the payment of attorneys fees. Figiel requested an order in the amount of his judgment, $15,999.85, while Beermann requested $41,754.01 pursuant to the terms of the agreed orders entered on August 19 and November 10, 2014.

¶ 35 On July 24, 2015, a judge other than the one who had presided over the trial entered an agreed order in regards to the funds contained in the escrow account. The agreed order indicated that the escrow account consisted of $82,694 and that pursuant to the parties' agreement, those funds would be divided equally. William's share of $41,347 was to be distributed as follows: $10,000 to Debra to satisfy the judgment for dissolution, $5,479 to Debra for her share of a tax refund, $20,868 to Tzinberg for attorneys fees, and $5,000 as full payment towards Debra's tax liability for the liquidation of the Correll account. While the agreed order indicated that Debra's portion, $41,347, "represent[ed] funds awarded to Debra in the Judgment," those funds were ordered to be held in escrow until further order of court. The agreed order further provided, "That the Judgment is corrected to reflect that the Correll 401(k) account was the account liquidated (vs. the Schwab IRA) as referenced in paragraphs 12, 14, B and I of the Judgment for Dissolution of Marriage." A separate order was entered setting a briefing schedule on the petitions for leave to intervene and ordering a hearing on the matter.

¶ 36 On October 2, 2015, the circuit court conducted a hearing regarding the petitions for leave to intervene. The hearing was presided over by yet another judge. Figiel, Beermann, Tzinberg and Debra participated in the hearing. After hearing arguments, the circuit court ordered the funds in the escrow account be disbursed to Figiel in the amount of $15,999.85 with the remainder to Beermann ($25,347.15). This appeal followed.

¶ 37 ANALYSIS

¶ 38 On appeal, Debra argues that the circuit court erred in: (1) the distribution of the marital assets; (2) the amount and duration of the maintenance award; (3) the award of contribution towards her attorneys fees; and (4) entering an award of attorneys fees to Figiel and Beermann subsequent to the entry of the judgment for dissolution. We consider each argument in turn.

¶ 39 Distribution of the Assets

¶ 40 Debra first argues that the circuit court abused its discretion when it divided the marital assets equally where: (1) the marital assets were limited; (2) William was in a superior position to continue to acquire assets; (3) she has numerous health problems; (4) she moved across the country and gave up her employment to advance William's career; and (5) she has significant debt.

¶ 41 The Act requires the trial court to divide marital property in "just proportions" considering all relevant factors, including a number of statutory factors. 750 ILCS 5/503(d) (West 2014). "Just proportions" mandates an equitable, rather than an equal, division of marital property. *In re Marriage of Orlando,* 218 Ill. App. 3d 312, 319 (1991). In determining such just proportions, the court must take into consideration all relevant factors, including "the value of the property assigned to each spouse" and the economic circumstances of each spouse upon division of the property. 750 ILCS 5/503(d)(3), (5) (West 2014); *In re Marriage of Orlando,* 218 Ill. App. 3d at 319. Indeed, the statutory mandate that the property be divided in "just proportions" requires the court "to consider all aspects of the couple's economic circumstances." *In re Marriage of Rosen,* 126 Ill. App. 3d 766, 778 (1984). The circuit court, however, need not make a specific finding as to each relevant factor. *In re Marriage of Davis,* 215 Ill. App. 3d 763, 774 (1991). We will not disturb a circuit court's division of marital assets unless it has clearly

abused its discretion. *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071 (2005). "An abuse occurs when no reasonable person would take the view adopted by the trial court." *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658 (1998).

¶ 42 Our review of the record reveals that the circuit court did not abuse its discretion in its division of the marital assets and the record belies Debra's contentions. First, the circuit court was plainly aware of the parties' limited marital estate as it stated in the judgment for dissolution that "the parties do not have an extensive marital estate." Second, the record and the court's order is replete with findings regarding William's age and ability to earn more than Debra based on his education and experience in his profession. Third, Debra's testimony at trial did not establish that she currently suffers from "numerous medical problems." The testimony revealed that in 2010 she was diagnosed with Valley Fever, a common illness, and was sick for five months. Thereafter, Debra discovered a cyst in her breast that was removed. Then, in 2012, another cyst was found in her breast and removed. There was no testimony that Debra was currently ill and, in fact, the circuit court found that Debra testified she "had no present health conditions preventing her from working on a permanent basis and that she is willing to work full time." Fourth, while the record demonstrates that Debra relinquished her position as a property manager in South Carolina in 2002, upon moving to Arizona with her mother, Debra had the opportunity to obtain employment, but the parties agreed she would care for her mother on a full-time basis. After her mother's death in 2008, William encouraged Debra to seek gainful employment. Debra instead remained unemployed. The testimony therefore demonstrates that Debra did not forgo her career to support William.

¶ 43 Lastly, the language of the judgment for dissolution demonstrates that the circuit court considered Debra's debts when it divided the marital assets equally and provided $10,000 in

contribution from William towards Debra's debts. The record establishes that a majority of Debra's debts were incurred following the parties' legal separation, and thus, the circuit court's finding that Debra was responsible for the debts she incurred was not against the manifest weight of the evidence. See *In re Marriage of Stufflebeam*, 283 Ill. App. 3d 923, 929 (1996) (a trial court may require that debts incurred following separation be paid by the party incurring them). Accordingly, we cannot say that the circuit court abused its discretion when it divided the marital assets equally among the parties. See *In re Marriage of Orlando*, 218 Ill. App. 3d at 319 ("The touchstone of apportionment of marital property is whether the distribution is equitable and each case rests upon it own facts.").

¶ 44 Maintenance

¶ 45 Debra next argues that the circuit court abused its discretion when it entered its award of reviewable maintenance in the amount of $4,500 per month. Specifically, Debra asserts that the circuit court erred in: (1) failing to consider the guidelines contained in section 504(b-1)(1) of the Act when determining the amount of maintenance; (2) its application of the statutory factors; (3) failing to impute a higher income to William based on his voluntary under-employment; and (4) imputing a $25,000 per year gross salary to her. We first turn to consider the law and the standard of review for determining an award of maintenance under the Act.

¶ 46 Section 504 of the Act provides that in a proceeding for dissolution of marriage, the trial court "may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time," after consideration of all relevant factors. 750 ILCS 5/504(a) (West 2014). The relevant factors enumerated under section 504(a) of the Marriage Act are as follows:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." *Id.*

No single factor is determinative in considering the duration and amount of maintenance and the circuit court is not limited to a review of the factors outlined in section 504 of the Act in setting a maintenance award. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008). Importantly, the

circuit court must consider all of the relevant statutory factors in establishing a maintenance award, but it need not make specific findings as to the reasons for its decision. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1004 (2008). A maintenance award lies within the sound discretion of the circuit court, and a reviewing court will not reverse that decision unless it constitutes an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 47 Regarding the circuit court's application of the section 504 factors, we cannot say the court abused its discretion in determining that Debra was entitled to maintenance. Notably, William agreed that Debra was entitled to maintenance. Where the parties disagreed, and what is the subject of this appeal, is whether the circuit court erred in the type and amount of maintenance it awarded Debra.

¶ 48 Upon concluding that an award of maintenance is warranted, the circuit court must establish the appropriate type and amount of maintenance. See 750 ILCS 5/504(b-1) (West 2014). As a general rule, "[m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living." *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708 (2006). Ultimately, a maintenance award, whether it is temporary or permanent, must be reasonable (*Reynard*, 378 Ill. App. 3d at 1002) and what is reasonable depends upon the facts of each individual case (*Vendredi v. Vendredi*, 230 Ill. App. 3d 1061, 1067 (1992)).

¶ 49 A circuit court's determination as to the awarding of maintenance is presumed to be correct. *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063 (2005). Because maintenance

awards are within the sound discretion of the circuit court, we will not disturb a maintenance award absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 50 We first address Debra's argument that the circuit court erred in failing to consider the guidelines contained in section 504(b-1)(1) of the Act. Section 504(b-1) provides:

> "If the court determines that a maintenance award is appropriate, the court shall order maintenance in accordance with either paragraph (1) or (2) of this subsection (b-1):
>
> (1) Maintenance award in accordance with guidelines. In situations when the combined gross income of the parties is less than $250,000 and no multiple family situation exists, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.
>
> (A) The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount in excess of 40% of the combined gross income of the parties.
>
> (B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage by whichever of the following factors applies: 0-5 years (.20); 5-10 years (.40); 10-15 years (.60); or 15-20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or maintenance for a period equal to the length of the marriage.
>
> (2) Maintenance award not in accordance with guidelines. Any non-guidelines award of maintenance shall be made after the court's consideration of all relevant factors

set forth in subsection (a) of this Section." 750 ILCS 5/504(b-1) (West 2014).

¶ 51 The language of section 504(b-1)(1) of the Act is clear that the guidelines only apply when "the combined gross income of the parties is less than $250,000 and no multiple family situation exists." Here, William's gross income alone is $300,000, thus, the circuit court did not err when it awarded maintenance pursuant to section 504(b-1)(2) of the Act.

¶ 52 We next consider the circuit court's application of the section 504 factors in determining the type and amount of the award for maintenance. Here, the basis for the circuit court's award of maintenance was established by the evidence which demonstrates that (1) Debra was voluntarily unemployed since her mother's passing in 2008; (2) prior to the marriage Debra maintained full-time employment; (3) Debra suffers from no present health conditions preventing her from working on a permanent basis; and (4) Debra did not need to obtain a higher educational degree or additional training to obtain full-time employment with her current employer. In addition, the evidence supported the circuit court's finding that Debra had a history of being fiscally irresponsible and that her disclosure statement produced inflated needs such as $400 per month for vacations, $400 per month for clothing, and $200 per month for grooming. We further observe that the circuit court expressly considered the disparity between the parties' incomes and also acknowledged Debra's "somewhat limited present and future earning capacity" when rendering its determination. The circuit court also considered the duration of the marriage and Debra's lack of contribution toward William's career. Based on the evidence presented at trial, we cannot say that the circuit court abused its discretion in its award of maintenance to Debra.

¶ 53 Debra further argues that the circuit court erred in its calculation of the parties' incomes. According to Debra, the court should not have imputed an income of $25,000 a year to her, but

instead should have imputed a higher income to William based on his voluntary under-employment.

¶ 54 The ability of the maintenance-paying spouse to contribute to the other spouse's support is determined by considering both the paying spouse's current and future ability to pay ongoing maintenance. *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075, 1089 (2011). For the purpose of imputing income to the paying spouse, a court must find one of the following: (1) the payor has become 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. *Id.* We will not disturb a circuit court's finding of a party's income for the purpose of setting a support award absent an abuse of discretion. *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 30. An abuse of discretion occurs only where no reasonable person could take the view adopted by the circuit court. *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 31 (1986).

¶ 55 Here, the circuit court was presented with William's own testimony that he could increase his salary by working more hours or by "moonlighting" with another practice group. The circuit court, however, also heard and considered William's testimony that he was working five days a week (and was on call every third weekend) and earning $300,000 a year. William's full-time employment can hardly be said to equate to "voluntary unemployment" and Debra cites no cases in support of her position that it is so. Accordingly, we find Debra's argument that the circuit court should have imputed a higher income to William is not well-founded. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (the argument section "shall contain *** citation of the authorities *** relied on").

¶ 56 Debra also argues that the circuit court's imputation of a $25,000 annual income to her was an abuse of discretion, particularly where "this number is not even proper math." The

testimony at trial established that Debra was making $10 per hour as a home health aide. Presuming full-time employment consisted of working 40 hours a week, 52 weeks a year, Debra's yearly income would be $20,800. Accordingly, the circuit court was mistaken when it calculated Debra's imputed yearly income to be $25,000. Even so, a circuit court abuses its discretion where no reasonable person could take the view adopted by the circuit court. *Kaplan*, 149 Ill. App. 3d at 31. Furthermore, in determining whether there has been an abuse of discretion, this court does not substitute its own judgment for that of the circuit court, or even determine whether the circuit court exercised its discretion wisely. See, *e.g.*, *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 14. Thus, we cannot say that an imputed income of $25,000 is unreasonable based on the evidence presented. Prior to and during her marriage, Debra was a 40 year old self-sufficient woman earning $40,000 a year. Although Debra was out of the workforce between 2002 and 2008 to care for her mother, she was able to obtain employment thereafter, but voluntarily chose not to find gainful employment. In fact, Debra testified that no health issues precluded her from working and she is willing to work full time. Moreover, Debra's annual gross income including the $4,500 monthly maintenance award would be $74,800, which is comparable to the circuit court's calculation of Debra's gross income at $79,000. Accordingly, we cannot say the circuit court abused its discretion when it imputed a yearly income to Debra of $25,000. See *In re Marriage of Kennedy*, 214 Ill. App. 3d 849, 861 (1991) (finding the circuit court did not abuse its discretion in its maintenance award despite a mathematical error in the amount of the wife's income).

¶ 57 Contribution

¶ 58 Debra next argues that the circuit court abused its discretion when it found that the only contribution William had to pay towards her attorneys fees was the division of a retirement

account, of which Debra had already been awarded fifty percent. According to Debra, this "sole 'contribution' from William is the agreed-upon division of a retirement account, which essentially became a pre-distribution to Debra." Debra maintains that if this "were truly a contribution, that would mean that William was allocated far greater than 50% of the marital assets."

¶ 59 Generally, attorney fees are the responsibility of the person for whom the services were rendered. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 45. The Act, however, gives the circuit court the discretion to order one spouse to pay all or contribute in part to the other spouse's attorney fees, after considering the parties' financial resources. *In re Marriage of Minear*, 181 Ill. 2d 552, 561-62 (1998). Under section 508(a) of the Act, the circuit court may order a party to contribute a reasonable amount of the opposing party's attorney fees. 750 ILCS 5/508(a) (West 2014). A contribution award is based on the criteria for the division of marital property and where maintenance has been awarded, the criteria for an award of maintenance. 750 ILCS 5/503(j)(2) (West 2014); see *In re Marriage of Suriano and LaFeber*, 324 Ill. App. 3d 839, 852 (2001). The criteria includes the property awarded to each spouse, their incomes and present and future earning capacities and "any other factor that the court expressly finds to be just and equitable." See 750 ILCS 5/503(d), 504(a) (West 2014).

¶ 60 Section 503(j) requires that contribution petitions be decided before judgment is entered so that the final amount of fees can be calculated and the circuit court can consider the fees in its decision regarding all the financial matters presented. 750 ILCS 5/530(j) (West 2014); *In re Marriage of Cozzi-DiGiovanni*, 2014 IL App (1st) 130109, ¶ 8. The allocation of attorneys fees is integral to decisions regarding the financial recourses of the parties and should be made before a reviewing court can properly assess the propriety of the circuit court's awards of maintenance,

child support, or property division. *In re Marriage of Tomei*, 253 Ill. App. 3d 663, 666 (1993).

¶ 61 A circuit court's determination to award fees is a matter of discretion and will not be disturbed absent an abuse of discretion. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007).

¶ 62 On appeal, both William and Debra read the judgment for dissolution as awarding Debra contribution towards her attorneys fees in the amount of 50% of the Schwab IRA (but also acknowledge that the judgment was subsequently corrected to be in regards to the Correll account and not the Schwab IRA). Debra maintains that this award is an abuse of discretion, where the circuit court divided the marital retirement accounts equally between the parties, and thus a contribution award of 50% of the retirement account was actually no contribution award at all.

¶ 63 We agree with Debra if that is how the judgment for dissolution awarded contribution it would be an abuse of discretion. Our reading of the judgment, however, differs. The award of attorneys fees is stated in the judgment for dissolution as follows:

> "This Court finds that each party owed his/her attorneys significant balances at the time they entered into the Agreed Order on August 19, 2014, which ordered the liquidation of WILLIAM's Charles Schwab retirement account, of which 55% was to then be split evenly between both parties' attorneys. The Agreed Order designated these retirement funds as interim attorneys' fees pursuant to Section 501(c-1) of the IMDMA. Accordingly, each party elected to pay for his/her then outstanding attorney fee balance with his/her share of the Charles Schwab retirement account. This Court has calculated supra that there should be approximately twenty six thousand one hundred dollars ($26,100.00) remaining in the Charles Schwab IRA. Each party will receive fifty percent

> (50%) of the remaining account balance, which amounts to $13,050.00 dollars each and said amounts shall be used solely for attorney's fees. This *additional* $13,050.00 shall constitute WILLIAM's total contribution as and for DEBRA's attorneys' fees pursuant to Section 503(j)." (Emphasis added.)

The circuit court's use of the word "additional," particularly in the context of determining a contribution award, demonstrates that the circuit court intended that William's half of the Schwab IRA be utilized as contribution towards Debra's attorneys fees pursuant to section 503(j) of the Act (750 ILCS 5/503(j) (West 2014)).

¶ 64 An issue exists, however, regarding whether this contribution award remains valid where the judgment for dissolution does not recognize the November 10, 2014, agreed order, which liquidated the Correll account and not the Schwab IRA. The amount of funds in the Correll account (approximately $82,694 after taxes and fees) is disproportionate to the amount available in the Schwab IRA for payment of attorneys' fees ($26,000 after taxes and fees). The parties maintain that the judgment for dissolution's reference to the August 19, 2014, agreed order and the Schwab IRA were merely typographical errors that were subsequently corrected by a later court order. That agreed order, entered on July 24, 2015, by a different circuit court judge, provided that "the Judgment is corrected to reflect that the Correll 401(k) account was the account liquidated (vs. the Schwab IRA) as referenced in paragraphs 12, 14, B and I of the Judgment for Dissolution of Marriage." However, if we were to merely substitute in the names of the different accounts as the parties suggest, Debra would actually be awarded an additional 50% of the Correll account ($41,347) towards contribution for her attorneys fees. Based on the record before us, we cannot determine whether the circuit court intended this result. Accordingly, there remains a question regarding whether the circuit court abused its discretion

when it did not correctly incorporate the terms of the parties' agreement regarding the distribution of their marital property in the judgment for dissolution.

¶ 65 Pursuant to section 502 of the Act, the parties may enter into "a written or oral agreement containing provisions for disposition of any property owned by either of them" and the terms of the agreement "are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable." 750 ILCS 5/502(a), (b) (West 2014); see *In re Marriage of Hightower*, 358 Ill. App. 3d 165, 170-71 (2005). Section 502 further states in pertinent part, "[u]nless the agreement provides to the contrary, *its terms shall be set forth in the judgment*, and the parties shall be ordered to perform under such terms ***." (Emphases added.) 750 ILCS 5/502(d) (West 2014).

¶ 66 Here, the parties entered into two agreed orders regarding the disposition of specific marital property. As previously discussed, the judgment for dissolution did not reference or incorporate the November 10, 2014, agreed order as required by section 502 of the Act. 750 ILCS 5/502 (West 2014). Instead, the judgment for dissolution referenced the August 19, 2014, agreed order. While the judgment included a detailed analysis of the parties' assets and debts, made specific findings regarding each, and determined the issue of contribution based on those findings, it improperly relied on the parties' August 19, 2014, agreed order and not the terms of the November 10, 2014, agreed order. As noted, the remaining balance of the Schwab IRA ($26,100) is markedly different from the remaining balance of the Correll account ($82,694) after taxes and fees. Accordingly, we cannot say that the circuit court's error in failing to incorporate the terms of the November 10, 2014, agreed order into its judgment for dissolution was merely typographical, i.e. that the circuit court only mistakenly referred to the August 19,

2014, agreed order instead of the November 10, 2014, agreed order and that its judgment would be the same regardless. Moreover, the circuit court made no findings that the November 10, 2014, agreed order was unconscionable so as not to include it in the judgment for dissolution. See 750 ILCS 5/502(b) (West 2014). Thus, we remand the matter for the circuit court to reconsider its judgment, including contribution of attorneys fees in Debra's favor, in light of section 502 and the November 10, 2014, agreed order.

¶ 67 Attorneys Fees

¶ 68 Debra raises numerous issues regarding the propriety of the circuit court's rulings regarding the payment of attorneys fees to both of her trial counsels, Figiel and Beermann. First, Debra asserts that the circuit court erroneously allowed Figiel to intervene as a judgment creditor and collect the escrowed funds to satisfy its judgment. Second, that the circuit court improperly allowed Figiel to attach a judgment to retirement funds. Third, Debra maintains that the circuit court erred in its award of attorneys fees to Beermann where (a) it was enforcing a temporary order subsequent to the entry of the judgment for dissolution and (b) there was no hearing conducted to determine the reasonableness of Beermann's fees. We address each issue in turn.

¶ 69 Section 508 of the Act provides circumstances under which the circuit court may award necessary attorneys fees to a party to a marital dissolution. *In re Marriage of Ahmad*, 198 Ill. App. 3d 15, 18 (1990). Section 508(c) states that the court may order that the award of attorney fees be paid directly to the attorney, who may enforce such order in his name. 750 ILCS 5/508(c) (West 2014); *In re Marriage of Birt*, 159 Ill. App. 3d 281, 283 (1987). The attorney has standing pursuant to section 508(c) to pursue an action for fees himself as a party in interest and section 508(c) promotes judicial economy by eliminating the need for an attorney to bring a separate suit to collect fees from his client. *In re Marriage of Baniak*, 2011 IL App (1st) 092017,

¶ 11.

¶ 70 We review a circuit court's award of attorney fees under section 508(a) of the Dissolution Act (750 ILCS 5/508(a) (West 2014)) for an abuse of discretion. See *Micheli*, 2014 IL App (2d) 121245, ¶ 44. A circuit court abuses its discretion when it acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice. *Id.*

¶ 71 On appeal, Debra does not assert that Figiel is not entitled to an attorney fee award or that his fees were unreasonable. Instead, Debra contends that the circuit court erred in allowing Figiel to intervene as a judgment creditor and collect the retirement funds to satisfy the attorney fee judgment.

¶ 72 Initially, we conclude that the circuit court did not err in allowing Figiel to intervene in the dissolution action after it had withdrawn as Debra's counsel. "It is well-established that the attorneys for the litigants in a dissolution proceeding are considered as parties in interest in an action for attorney fees to the extent that while such fees are generally awarded to the client, they properly 'belong' to the attorney. [Citations.] The attorney has standing in such cases to pursue an action for fees himself as a party in interest." *Cantwell v. Reinhart*, 244 Ill. App. 3d 199, 203-4 (1993); see *Lee v. Lee*, 302 Ill. App. 3d 607, 612 (1998); 750 ILCS 5/508(c) (West 2014).

¶ 73 Regarding Debra's contention that the circuit court improperly allowed Figiel to attach a judgment to retirement funds, we find that issue to be waived. It is well settled that "[i]ssues not raised in the trial court are waived and cannot be argued for the first time on appeal." *In re Marriage of Minear*, 181 Ill. 2d 552, 564 (1998). The record discloses that at the October 2, 2015, hearing Debra's counsel only argued that Figiel did not have a basis to intervene in the matter. No argument was raised as to the type of funds to which Figiel's judgment could attach.

¶ 74 Debra next maintains that the circuit court erred in its award of attorneys fees to Beermann where it was (a) enforcing a temporary order subsequent to the entry of the judgment for dissolution and (b) there was no hearing conducted to determine the reasonableness of Beermann's fees.

¶ 75 In considering this issue, we again observe that the orders liquidating the retirement account and setting up an escrow account with those funds was made pursuant to an agreed order. See 750 ILCS 5/502(a) (West 2014). Thus, these were not "interim" or "temporary" orders from the circuit court, but an agreed disposition of the marital property between the parties. See *id.*

¶ 76 We find, however, that Beermann's request for payment of attorneys fees was not properly before the circuit court. See 750 ILCS 5/508(c) (West 2014) (contemplating that a "Petition for Setting Final Fees and Costs" shall be filed after the counsel of record has filed a motion for leave to withdraw as counsel). Although Beermann filed a petition for leave to intervene in the dissolution action and therein requested leave to file a petition for attorneys fees, leave to file such a petition was never granted and no attorney fee petition was ever filed. Indeed, the record before us does not contain a single billing statement or affidavit from Beermann supporting the amount of fees it requested at the October 2, 2015, hearing. See 750 ILCS 5/508(c)(3) ("Before ordering enforcement, however, the court shall consider the performance under the contract. Any amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were reasonable and necessary."); *In re Marriage of Pick*, 167 Ill. App. 3d 294, 306 (1988) (noting that "extensive time records were introduced into evidence, and there was comprehensive inquiry into the services rendered, thereby refuting petitioner's contention that the fees were not proved

reasonable"). It was therefore and abuse of discretion for the circuit court to enter a judgment in favor of Beermann in the amount of $25,347.15 where no fee petition was filed and the circuit court did not make a finding as to the reasonableness of the fees. See *id.*; *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 113 (2000) (observing that section 508(a) of the Act requires the amount of attorney fees a party is order to pay for his own attorney be reasonable). Accordingly, we reverse the portion of the circuit court's October 2, 2015, order awarding Beermann attorneys fees.

¶ 77 CONCLUSION

¶ 78 For the reasons stated above, we affirm the circuit court's judgment with regard to its allocation of marital assets and debts as well as its award of maintenance. We reverse the portion of the circuit court's judgment regarding contribution towards Debra's attorneys fees as well as the circuit court's order granting Beermann $25,347.15 in attorneys fees. The matter is remanded for further proceedings consistent with this order.

¶ 79 Affirmed in part; reversed in part; remanded.