2017 IL App (2d) 160528-U
No. 2-16-0528
Order filed July 20, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF WILLIAM J. BERNARD,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellee,	)	
and	)	No. 10-D-2378
SUSAN C. BERNARD, n/k/a Susan C. Jahn,	)	Honorable Robert E. Douglas,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in terminating respondent's maintenance award: per the parties' agreement, the court properly conducted a general review of maintenance, its factual findings were not against the manifest weight of the evidence, and it did not abuse its discretion in terminating the award in light of respondent's ability to support herself through her own assets.

¶ 2 The eight-year marriage of petitioner, William J. Bernard, and respondent, Susan C. Bernard, n/k/a Susan C. Jahn, was dissolved in March 2012. Incorporated into the judgment dissolving the parties' marriage was the parties' marital settlement agreement (MSA). The MSA provided that respondent would receive monthly maintenance of $2,250 for 18 months. Under a

separate provision of the maintenance portion of the MSA, the parties agreed that respondent would continue to work with her psychologist toward the goal of returning to the level of functioning she had before the parties divorced. Before the duration of the maintenance award lapsed, respondent petitioned to extend the maintenance award. After a hearing, where evidence of respondent's fragile mental health and her assets of $1.9 million was presented, the trial court terminated maintenance, finding that respondent's assets could be used to support her in a manner consistent with the standard of living the parties enjoyed during their marriage. This timely appeal followed.[1] At issue in this appeal is whether the MSA provided for a general or limited review of maintenance, and if the MSA provided for a general review of maintenance, we are asked to consider whether the trial court made erroneous factual findings and abused its discretion in terminating maintenance. We determine that the MSA provided for a general review of maintenance, the court did not make erroneous factual findings, and the court did not abuse its discretion in terminating maintenance. Thus, we affirm.

¶ 3 The MSA provided that petitioner worked as a solutions engineer, earning an annual gross salary of approximately $110,000 plus a discretionary bonus. Respondent, though unemployed, earned a gross amount of $30,000 per year from dividends and interest that her nonmarital investment account produced.

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[1] The parties note that, when the notice of appeal was filed on July 6, 2016, a petition for rule to show cause was pending in the trial court. That petition was dismissed with prejudice on January 5, 2017, and thereafter petitioner filed an amended notice of appeal on January 10, 2017. Irrespective of the amended notice of appeal, this court has jurisdiction over this appeal under *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (2007).

¶ 4 The MSA also indicated that the marital home was worth approximately $330,000; the parties would equally split the net proceeds from the sale of that home; the parties had already divided the home's furnishings; the parties would equally divide a joint checking and savings account; each party would keep his or her own retirement accounts; petitioner would keep " 'Phantom Shares' " he obtained from his employer; respondent would keep her $1.5 million in investments; respondent would obtain her own health insurance, with petitioner helping her to acquire any COBRA forms she needed; respondent would keep her 2007 Volkswagen GTI; and petitioner would keep his 2012 Acura TL. Further, the MSA provided that each party would be responsible for his or her own attorney fees in addition to his or her own debts and liabilities, with respondent being liable for the balance on the couple's Discover credit card.[2]

¶ 5 Also included in the MSA was a provision for maintenance. Paragraph 1(a) of the maintenance portion of the MSA provided that petitioner would pay respondent $2,250 per month in "reviewable, modifiable" maintenance, in addition to a portion of his bonuses, from May 15, 2012, to November 14, 2013. Paragraph 1(a) then provided that "[p]rior to the expiration of the eighteen month period on November 14, 2013, [respondent] may petition this court to extend the maintenance payments to her in the same amount, a lesser amount or a greater amount." Paragraph 1(a) concluded:

> "All payments remain modifiable by either party upon the granting of a petition to modify. In the event [respondent] fails to file a Petition to Extend the Maintenance Payments, then the parties hereby stipulate that [respondent] is able to be self-supporting

[2] Although the record does not appear to indicate what the balance on that credit card was in March 2012, the record reveals that the account was opened in March 2012 and that the credit line available on the card as of February 2015 was $6,000.

through appropriate employment and/or through property ownership, including marital and non-marital property apportioned to her pursuant to the Agreement, and to provide for her reasonable needs for maintenance and support."

¶ 6 Paragraph 1(b) of the maintenance portion of the MSA provided:

"The parties agree and acknowledge that [respondent] has been and remains under the treatment of Joann Wright, Ph.D. for panic disorder, manic depressive disorder and post-traumatic stress syndrome. Per Dr. Wright, the focus of that therapy continues to be on returning [respondent] to her previous level of functioning before the parties' divorce. [Respondent] acknowledges an ongoing responsibility to follow the treatment recommendations of Dr. Wright or successor therapists, and other of [respondent's] treaters. Consistent with [respondent's] stated responsibility, [respondent] will continue to engage in psychological therapy and shall follow the treatment recommendations of Dr. Wright or her successor and [respondent's] other treatment providers consistent with her ability to do so."

¶ 7 Paragraph 1(c) delineated the various scenarios under which maintenance would end. That paragraph did not indicate that maintenance would terminate if respondent failed to continue with her psychological treatment. Paragraph 2, which was the last provision under the maintenance portion of the MSA, provided that petitioner waived any claim to receive maintenance from respondent.

¶ 8 On July 13, 2015, respondent petitioned to extend maintenance. A hearing on that petition began on March 29, 2016.[3] At that hearing, Dr. Wright's evidence deposition was

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[3] The proceedings were delayed because Dr. Wright failed to turn over her treatment records for respondent. This caused petitioner to petition to terminate maintenance or have the

admitted. In that deposition, Dr. Wright indicated that, although respondent is able to "keep up with her activities of daily living," Dr. Wright believed that respondent, despite her compliance with therapy, was permanently disabled. In making that assessment, Dr. Wright noted that respondent's mental health was poor; respondent had periods where her illness waxed and waned; respondent had attempted to obtain employment twice in the recent past; those attempts were futile given respondent's mental state; respondent had attempted suicide; and applying for Social Security or modifying her investments would decrease respondent's well-being.

¶ 9 Respondent testified that she has a master's degree in clinical psychology. With this degree, she worked as a counselor until her depression and anxiety forced her to leave. When she left, she was married to petitioner.

¶ 10 After that, respondent did volunteer work with two different organizations. One of the places where she volunteered was Loaves and Fishes. Respondent indicated that she was court-ordered to do this volunteer work after she pleaded guilty to driving while under the influence. Of the 100 hours respondent has to complete, she had completed 10 hours, plus 40 hours of class work, in three months. Respondent missed one volunteer session when she had a migraine.

¶ 11 Respondent also testified that she received a substantial sum of money from her father after her parents divorced. That money was placed in a Fidelity Investments account. Respondent did not know how much money was in the account, as talking with brokers and making decisions about what to do with the money made her anxious. However, somewhat reluctantly, respondent moved money from the account to her checking account to cover her expenses. Respondent indicated that her living expenses of $3,995.26 per month exceed her

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court issue a rule to show cause why Dr. Wright should not be held in contempt of court.

monthly income by $1,206.26. Respondent also testified that she has not applied for Social Security disability, because she believes that she is not disabled.

¶ 12 The record reveals that testifying was stressful for respondent. Several breaks were taken during her testimony, and the court admonished petitioner's counsel to be as gentle as possible during cross-examination.

¶ 13 Brandi Ruffalo, petitioner's expert in financial planning, testified about 20 different investment scenarios that respondent could adopt to make money on her investments. Although many of these scenarios would not provide respondent with money to live on throughout her life, some would. For example, Ruffalo noted that, with her $1.9 million in investments, respondent, though risk-averse, could invest her money very conservatively and potentially make $4,700 to $6,666 per month indefinitely without invading the principal.

¶ 14 Respondent's expert, Brian Eisenmenger, testified that he compiled three different investment scenarios for respondent. Under each one, petitioner would be able to withdraw between $66,000 and $89,000 annually, but she would run out of money on which to live when she turned 85 years old.

¶ 15 Although petitioner did not testify, evidence of his financial circumstances was presented. That evidence revealed that petitioner's salary had increased to $206,145 and that his other assets had realized a gain of $32,311. After paying his expenses and maintenance, petitioner was left with $717 per month.

¶ 16 The trial court, after noting that it had conducted a general review of the maintenance award, terminated maintenance. In doing so, the court found that paragraph 1(b) under the provision covering maintenance in the MSA "merely place[d] an obligation on [respondent] that she was required to fulfill in order to receive the court ordered maintenance." The court then

observed that it had considered all of the factors in sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), 510(a-5) (West 2014)), but it paid particular attention to a few. Specifically, the court found that there was no question that respondent is disabled and that she is currently unable to maintain a regular job. However, the court believed that, given respondent's ability to complete a portion of the court-ordered community service, it could not rule out future employment for respondent, especially if conditions became such that she was forced to work. See 750 ILCS 5/504(a)(3), (a)(9), 510(a-5)(2), (a-5)(3) (West 2014).

¶ 17 Moreover, the court rejected respondent's claim that she needed maintenance because she was unable to make investment decisions with regard to her $1.9 million Fidelity Investments account. In doing so, the court noted that Ruffalo determined that respondent could invest in a virtually no-risk investment plan that would yield her an indefinite income sufficient to meet her needs. The court also noted that respondent could turn her money over to an investment advisor who could manage the investment for her and obtain a reasonable rate of return, or respondent's family could petition to have a financial guardian appointed to oversee the investment for her. Although the court recognized that taking such actions might be difficult for respondent, she had demonstrated that she was able to engage in difficult tasks, like participating in community service, without significant adverse consequences. See 750 ILCS 5/504(a)(1), 510(a-5)(6) (West 2014).

¶ 18 The court also found that there was no change in the parties' employment (see 750 ILCS 5/510(a-5)(1) (West 2014)); petitioner's increase in income was a "non-factor" (see 750 ILCS 5/510(a-5)(7) (West 2014)); respondent's monthly expenses were consistent with the standard of living enjoyed during the marriage (see 750 ILCS 5/504(a)(2), (a)(7) (West 2014)); and

respondent's refusal to apply for Social Security did not alter the fact that such funds were available to her to reduce her need for support (see 750 ILCS 5/504(a)(10) (West 2014)).

¶ 19 Respondent raises three issues on appeal. Specifically, she asks us to consider whether (1) the MSA provided for a general or limited review of maintenance; (2) the court made erroneous factual findings; and (3) the court abused its discretion in terminating maintenance. We consider each issue in turn.

¶ 20 The first issue we address is whether the MSA provided for a general or limited review of maintenance. In proceedings that provide for a general review of maintenance, the party who petitioned to alter the terms of the maintenance award does not bear the burden of establishing a substantial change in circumstances. *Blum v. Koster*, 235 Ill. 2d 21, 35-36 (2009). Rather, the court must assess the award in light of the factors delineated in sections 504(a) and 510(a-5) of the Act. See 750 ILCS 5/504(a), 510(a-5) (West 2014). Those factors include, for example, changes in the parties' employment status, any increase or decrease in each spouse's income, efforts the spouse receiving maintenance has made to become self-sufficient, the realistic present and future earning potential of each party, the tax consequences the spouse paying maintenance has incurred, the property awarded to each party, the needs of each spouse, the standard of living established during the marriage, and the duration of the marriage. See 750 ILCS 5/504(a)(1), (a)(2), (a)(3), (a)(7), (a)(9) (West 2014), 510(a-5)(1), (a-5)(2), (a-5)(4), (a-5)(6), (a-5)(7), (a-5)(8) (West 2014). In proceedings that involve a limited-review of maintenance, the parties, or the court, specifically delineate the precise issues that will be considered in the review. *In re Marriage of Golden*, 358 Ill. App. 3d 464, 470 (2005). After considering the specific predetermined factors in a limited-review proceeding or the factors delineated in sections 504(a)

and 510(a-5) of the Act in a general review, the court may modify maintenance, terminate it, or alter the payment terms. See *Blum*, 235 Ill. 2d at 36.[4]

¶ 21 With those principles in mind, we now turn to an examination of the parties' MSA. "Interpreting a marital settlement agreement is a matter of contract construction." *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425 (2005). "As such, courts seek to give effect to the parties' intent." *Id.* at 426. "The language used in the marital agreement generally is the best indication of the parties' intent [citation], and when the terms of the agreement are unambiguous, they must be given their plain and ordinary meaning [citation]." *Id.* Moreover, we must consider the agreement as a whole in deciding the parties' intent. *Blum*, 235 Ill. 2d at 35. "We review *de novo* an interpretation of a marital settlement agreement." *In re Marriage of Dundas*, 355 Ill. App. 3d at 426.

¶ 22 Respondent argues that the MSA provided for a limited review of maintenance. Specifically, she claims that paragraph 1(b) of the portion of the MSA that provided for maintenance established that respondent shall receive maintenance as long as she continued to seek treatment for her mental-health issues. Respondent claims that any other interpretation would render paragraph 1(b) meaningless. Petitioner contends that, although the MSA required respondent to continue with therapy, nothing in the agreement limited a subsequent review of the maintenance award to a consideration of that factor alone.

¶ 23 We agree with petitioner. Paragraph 1(a) of the MSA addresses the potential increase or decrease of maintenance. Assessing whether to increase or decrease respondent's maintenance

[4] Although *Blum* addresses the outcomes available to a court after a general review of maintenance, we see no reason why the outcomes should be any different in a limited review of maintenance, unless, of course, the limited review specifically provides for limited outcomes.

award would require some economic evidence separate from the issue in paragraph 1(b). Further, although, under the maintenance provision of the MSA, respondent had an obligation to continue with her treatment, that obligation did not limit the scope of a subsequent review. Rather, we believe, as the trial court found, that the inclusion of paragraph 1(b) "place[d] an obligation on [respondent] that she was required to fulfill in order to receive the court ordered maintenance." Finally, paragraph 1(c) outlines scenarios under which respondent's maintenance award would terminate. Respondent's failure to continue with her treatment is not mentioned as a terminating event.

¶ 24 In reaching our conclusion, we find *Blum* instructive. There, the parties' MSA provided that the wife would receive unallocated maintenance and support for 61 months, that the maintenance award would be reviewable on a particular date, and that maintenance would not terminate without a court order. *Blum*, 235 Ill. 2d at 25. "Under a separate provision within the same section of the [MSA, the wife] agreed to make 'reasonable efforts to become economically self-sufficient.' " *Id.* Our supreme court determined that the MSA provided for a general review of maintenance. *Id.* at 35. The court found that, although the wife was obligated to work toward becoming self-sufficient, the alteration of the maintenance award was not tied solely to her success or failure on that point. See *id.* at 40-41. Here, as in *Blum*, respondent had to continue with her treatment, but that was not the sole issue the court could consider in deciding whether to alter her maintenance award.

¶ 25 Having concluded that the MSA provided for a general review of maintenance, we next address whether the trial court erred in terminating respondent's maintenance award. In considering that issue, we first address respondent's claim that the trial court made erroneous findings of fact. "When a party challenges a trial court's factual findings regarding a

maintenance determination, this court will not reverse the findings unless they are against the manifest weight of the evidence." *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 21. "Findings are against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Id.*

¶ 26 Respondent claims that the trial court made three findings that were incorrect. First, she notes that the trial court, in terminating maintenance, found:

> "When forced to work, [respondent] has not acted out irrationally or manifested suicidal ideations, according to the evidence reviewed by the court. Given this, the Court cannot rule out future employment for [respondent], especially if conditions become such that she is forced to work."

Respondent claims that this was erroneous, as the evidence revealed that respondent's mental-health problems prevented her from successfully interviewing for two jobs. We disagree. Although the evidence indicated that respondent's attempts to interview for two jobs proved to be futile, the evidence also revealed that she is complying with her court-ordered community service. She has not only completed 40 hours of coursework, but she has fulfilled 10 hours of her community service at Loaves and Fishes. The only time that respondent did not go to community service in three months was when she had a migraine. Given that evidence, we cannot conclude that the trial court's finding was against the manifest weight of the evidence.

¶ 27 Second, respondent takes issue with the trial court's finding that she can "turn her money over to an investment advisor who could remove any anxiety from managing her money and obtain a reasonable rate of return on her funds." Respondent claims that this finding was error because it ignored the fact that respondent is incapable of making decisions about her finances.

We disagree. As the trial court found, respondent is quite capable of taking difficult actions, like petitioning to extend maintenance, without significant adverse consequences. She thus would be perfectly capable of engaging an investment advisor, who of course would spare her the need to make further decisions about her finances.

¶ 28 Last, respondent claims that the court erred in finding that "her family could petition and have a financial guardian appointed to oversee [her] investments." Respondent argues that nothing indicates that respondent has any family members who could intervene, and that, even if she did, Dr. Wright testified that respondent did not need a personal guardian, as she was capable of handling her own daily activities. Here, respondent appears to be taking inconsistent positions. On one hand she can handle her daily activities, on the other she is incapable of making financial and other life decisions. In any event, the evidence revealed that respondent has vacationed with her family and has traveled to Indiana to see them.

¶ 29 Having concluded that these findings were not against the manifest weight of the evidence, we next consider whether the trial court abused its discretion in terminating respondent's maintenance. The benchmark in determining the proper amount of maintenance to award a spouse is the standard of living established during the parties' marriage. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293 (2010). The amount of maintenance to award a spouse lies within the trial court's sound direction and will not be reversed absent an abuse of that discretion. *Id.* at 292. A trial court abuses its discretion when no reasonable person would adopt the view the trial court took. *Id.*

¶ 30 As noted, sections 504(a) and 510(a-5) of the Act (750 ILCS 5/504(a), 510(a-5) (West 2014)) delineate the factors a court should consider in deciding how much maintenance to award a spouse following a general review of maintenance. When a court considers these factors, it

need not give them equal weight. *In re Marriage of Nord*, 402 Ill. App. 3d at 293. Rather, in light of the unique circumstances of each case, the court must ensure only that a reasonable balance is struck. *Id.* And although the court is charged with considering all of the relevant factors, it is not required to make specific findings supporting the reasons for its decision. *Id.*

¶ 31 Here, we cannot conclude that the trial court abused its discretion in terminating respondent's maintenance. The evidence revealed that the parties did not live a lavish lifestyle. Their home was relatively unassuming, their cars were modest, and they did not spend money on expensive extraneous things. When the parties' marriage was dissolved, neither party was awarded a disproportionate share of the marital assets or debts. Although petitioner's income and the value of his assets had since increased, the evidence also revealed that respondent's investments had grown considerably in that same time. Specifically, the MSA revealed that respondent's investment account was worth $1.5 million when the marriage was dissolved, and 18 months later that investment had grown to $1.9 million.

¶ 32 Respondent argues that maintenance should not have been terminated, because she is disabled. Although we agree that a spouse's health should be assessed in deciding whether to award maintenance (see *In re Marriage of Chapman*, 285 Ill. App. 3d 377, 382 (1996)), we cannot conclude that that factor should be given more weight than any other. The court here clearly found that respondent was disabled and that her disability severely limited her present ability to work. However, the court determined that outweighing such considerations was the fact that respondent had $1.9 million that she could invest to support herself. Given that fact, we cannot conclude that the court abused its discretion in terminating respondent's maintenance award.

¶ 33 In support of her position, respondent cites *In re Marriage of Bothe*, 309 Ill. App. 3d 352 (1999). There, the wife, who was 58 years old, unemployed, and disabled, was awarded $2,000 per month in maintenance. *Id.* at 353-54. The husband petitioned to terminate maintenance after the wife was awarded a $3.7 million settlement in a medical malpractice case that involved the wife's disability. *Id.* at 354. The trial court denied the petition, but it abated the husband's maintenance obligation to a specified date. *Id.* at 354-55. This court affirmed, finding that the trial court's reservation of jurisdiction on the issue of future maintenance was reasonable. *Id.* at 356. Given that the wife's future medical expenses were unknown, we determined that it was not improper for the court to retain jurisdiction over the case in the event that the wife's settlement award would not cover those expenses. *Id.* at 357.

¶ 34 Respondent claims that, if the maintenance award in *Bothe* was not terminated, her maintenance should have been extended, because, as compared to the wife in *Bothe*, respondent's estate is smaller, she is younger, and she had her investments when the marriage was dissolved. We disagree. Not only was the wife in *Bothe*, unlike respondent here, severely physically disabled and her future medical needs were unknown, but " '[m]aintenance issues are presented in a great number of factual situations and resist a simple analysis.' " *In re Marriage of Drury*, 317 Ill. App. 3d 201, 208 (2000) (quoting *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 769 (2000)). So, the mere fact that the maintenance for the wife in *Bothe* was not terminated does not persuade us that respondent, who, according to her own expert, could live off of her investments, should have her maintenance extended.

¶ 35 Respondent also contends that the court abused its discretion when it refused to consider that petitioner's income increased. Although we agree with respondent that the financial circumstances of the payor spouse should be considered (see *In re Marriage of Brackett*, 309 Ill.

App. 3d 329, 342 (1999)), we cannot conclude that the court's statement that petitioner's increase in income was a "non-factor" means that the court failed to consider petitioner's financial circumstances. Rather, we believe that the court considered them but found them immaterial in light of the fact that respondent had a large amount of money in her investments that could be used to support her quite comfortably.

¶ 36 For similar reasons, we find unfounded respondent's claim that the court's order essentially required her to deplete her investments in order to support herself. Although we agree that spouses receiving maintenance are not required to sell all of their assets or impair their capital in order to maintain the standard of living established during the marriage (see *In re Marriage of Drury*, 317 Ill. App. 3d at 207), the evidence revealed that respondent can support herself with her investments for the rest of her life without impairing the principal. This places her in a position very different from that facing the wife in *Drury*, who did not have similar assets and forwent employment to raise the couple's children and take care of the home. *Id.* at 203-04.

¶ 37 For all of these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 38 Affirmed.