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2017 IL App (3d) 150480-U

Order filed March 31, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
MARY ROBIN GRIFFITH,)	Will County, Illinois
)	
Petitioner-Appellant,)	Appeal No. 3-15-0480
)	Circuit No. 08-D-2017
and)	
)	
WESTON HARRIS GRIFFITH, JR.,)	Honorable
)	Bennett J. Braun
Respondent-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion when it determined child support and maintenance. Its findings regarding dissipation were not against the manifest weight of the evidence. The trial court erred in reducing the equalizing payment and in failing to assess interest on the payment.

¶ 2 Petitioner Mary Robin Griffith and respondent Weston Harris Griffith were granted a dissolution of their marriage on December 31, 2012. The judgment determined the property distribution, custody, child support, maintenance and other matters. Weston was ordered to pay

Mary Robin an equalizing payment. The issue of the parties' outstanding tax liabilities was reserved. The trial court entered an order on January 23, 2015, allocating the tax liabilities, and an order on June 8, 2015, recalculating the equalizing payment due Mary Robin from Weston. Mary Robin appealed.

¶ 3

FACTS

¶ 4

Petitioner Mary Robin Griffith and respondent Weston Harris Griffith were married in 2001. They had three daughters during the marriage: Madeline, born in 2003; Hannah, born in 2004; and Grace, born in 2007. Mary Robin and Weston separated in October 2008 and Mary Robin filed a petition for dissolution of marriage in November 2008.

¶ 5

In March 2009, the trial court ordered Weston to pay the mortgages on the martial home in Frankfort and the couple's weekend home in Michigan, the real estate taxes on the properties, and the utilities. He was further ordered to pay unspecified support to Mary Robin and was responsible for various expenses related to the children. The trial court also required Weston to make the minimum payment on Mary Robin's credit cards. The trial court entered a custody order in June 2010, granting sole custody to Mary Robin and reserving visitation. Mary Robin filed a claim for dissipation in October 2010. In November 2010, the trial court entered a judgment of dissolution on grounds, finding irreconcilable differences.

¶ 6

A trial took place on all remaining issues. Mary Robin testified. She was 38 at the time of trial. She had an associate degree in culinary arts and in hotel and restaurant management, and had worked as a bartender and server prior to and during the early years of her marriage to Weston. The year before their marriage, she worked as an event planner earning \$27,000 per year. She stopped working outside the home after the couple's first child was born as she and Weston had agreed. She was not seeking work at the time of the trial because she was already

employed as a mother of three children. The parties' youngest daughter deserved her fulltime attention as the older girls had enjoyed. In her view, she needed retraining to return to work and was qualified to wait tables, bartend, hostess, or cook in the restaurant industry.

¶ 7 Mary Robin credited Weston's racing hobby as a significant factor in the breakdown of their marriage, which she estimated began in 2006, when Weston was spending considerable time and money on his racing. Weston raced locally and then began to go out of state, including Tennessee, Iowa, Michigan and Florida. The racing season ran from February to November and Weston sometimes raced as much as five times per month, usually from Thursday or Friday through Sunday. She did not know how much money Weston spent on racing but did not believe it benefitted her or the family. Children were not allowed at the race tracks so she and the couple's daughters did not accompany Weston. When Weston was at the races, Mary Robin was solely responsible for the home maintenance and caretaking for their daughters.

¶ 8 During the marriage, Weston was solely in control of the finances. Weston decided how much money she would receive and Mary Robin was not involved in any financial decisions or with the business. He paid all the bills and gave Mary Robin a weekly allowance and the use of a credit card. She did not participate in the preparation of the parties' tax returns and she did not sign them. Weston told her she did not have to be involved with the tax returns because she did not have any income.

¶ 9 Mary Robin's October 2010 expense and income affidavit indicated that she had expenses of \$14,119 per month for herself and the couple's daughters, no individual income and \$5,375 in monthly contributions from Weston, as well as reimbursement he owed her for various expenses.

¶ 10 Fred Lieber, a certified public accountant (CPA) specializing in litigation services, testified for Mary Robin. She retained him to evaluate the business and determine its fair market value. Lieber valued the business at \$ 1,847,000.

¶ 11 David Rogers, a CPA and senior manager of litigation support and business valuation for the Condon Group, testified. He was hired by Mary Robin to determine Weston's income for child support and maintenance calculations. He estimated Weston's annual net income as between \$450,000 and \$550,000. According to Rogers, Weston spent \$109,726 on racing in 2006 and \$93,669 in 2008.

¶ 12 Weston testified that he had a bachelor's degree in economics. He owned and operated the business, Solid Steel, before the parties married and Mary Robin had minimal contact with the business after their marriage. He controlled the parties' business and personal finances and Mary Robin did not participate in the banking or the preparation of tax returns. His assistant signed several tax returns for his wife. The business paid Mary Robin a weekly salary deposited directly into her checking account. He solely determined what the amount would be. The business paid Mary Robin's credit card bills in full each month. He had been unaware of the business's accounting inaccuracies.

¶ 13 Weston's expense and income affidavit dated September 27, 2010, provided that Weston's monthly gross income was \$3,122, with a net income of \$2,103 and expenses of \$3,774, not including maintenance and child support. The income did not include additional payments Weston received from the business beyond his salary.

¶ 14 Howard Ellison, a CPA, prepared a business valuation report on Weston's request. He valued Solid Steel at \$897,600. He also prepared an Internal Revenue Service (IRS) Form 3115 document, which changed the company's accounting method and resulted in an unreported

business income of \$1,771,527. A Form 3115 adjustment would allow Weston to stretch the tax liability over a number of years without accruing interest and penalties.

¶ 15 Following the trial, the court made oral findings on February 27, 2012. It found the marriage, although 10 years in length, was a *de facto* 7-year marriage and began its irreconcilable breakdown in January 2008, although Mary Robin and Weston did not separate until October 2008. Both Mary Robin and Weston were young and in good health. There were no issues preventing Mary Robin from working or raising the children. The court awarded sole custody to Mary Robin with visitation for Weston per the parties' parenting agreement.

¶ 16 The trial court considered the experts' determination of Weston's salary and found that his gross income averaged \$750,000 per year. The statutory guidelines set his child support obligation at 32% of his income, or \$12,802. After considering the statutory factors, the trial court found that amount was inappropriate and deviated downward from the guidelines, setting child support at \$10,000 per month.

¶ 17 The trial court also considered the maintenance factors, found they favored an award, and ordered that Weston pay Mary Robin \$5,000 per month in maintenance, reviewable in three years on Mary Robin's motion. The trial court ordered Weston to maintain health insurance for the children. Uncovered medical expenses were to be paid two-thirds by Weston and one-third by Mary Robin. Weston was responsible for two-thirds of any child care expenses Mary Robin incurred as result of attending school or work. The children's school expenses, including registration, fees, and books were to be shared equally. Both parents were to pay up to \$750 each child for extracurricular activities. The trial court denied Mary Robin's request for college expenses or a trust for the children.

¶ 18 The trial court valued the parties' real estate and awarded Mary Robin the marital home in Frankfort and the summer home in Michigan. Both properties carried mortgages. Weston was assigned the property in New Hampshire, the Maine cabin, the Indiana home where he lived and the Harvey property he used for business and his racing hobby. None of the real estate assigned to Weston carried a mortgage.

¶ 19 The parties were awarded various vehicles in their possession and accepted the values offered by Mary Robin's appraiser on the other vehicles. A patent held by Weston was not valued but the trial court ordered Weston to market the patent and divide any proceeds according to the marital estate percentages. The trial court allocated the Pizza Fusion warrants that Weston bought with \$520,000 from the escrow account 75% to him and 25% to Mary Robin, finding she should also benefit from his business acumen should the investment pay off. In the alternative, Mary Robin could opt for a lump sum buyout of \$130,000.

¶ 20 The trial court found that the business was transmuted to marital property and its profit sharing program and the brokerage accounts it used were also marital assets. Relying on the valuations provided by Lieber and Ellison, the trial court placed a fair market value of \$1,305,000 for the business and awarded it to Weston.

¶ 21 The court found Mary Robin did not discuss or participate in the business or finances and did not see or sign the personal tax returns. Mary Robin's weekly allowance was a commission check from the business, although she was not employed there. Mary Robin had a "general sense" of what was going on with the business, "particularly since she was drawing money on a weekly basis without providing services." She did not have the full picture of how the business was paying the parties' bills and treating business income as personal income.

¶ 22 The court found that Weston dissipated the marital estate in a nominal amount. It further found that the money he spent on racing was not dissipation, that racing was his hobby and that the majority of racing expenses took place in 2008, when the business had a good year and Weston had additional funds available. The trial court reserved the tax liabilities because they were still undetermined.

¶ 23 On December 31, 2012, the trial court entered the judgment of dissolution based on its February oral findings. The marital estate, including the business, was valued at \$4,059,801.80, which the trial court distributed 55% to Mary Robin and 45% to Weston. The trial court also issued a supplemental order providing for an equalization payment of \$884,688 to be made from Weston to Mary Robin, with a setoff for any mortgage amounts Weston paid on the marital home and Michigan summer home. Interest was stayed for six months but would accrue at 9% per year thereafter. The principal was to be paid in full with two years or by December 31, 2014. The tax liabilities remained reserved.

¶ 24 In January 2013, Weston filed a motion to stay enforcement of the judgment of dissolution, and the trial court granted the motion and stayed several provisions of the judgment, including the division of the marital estate. In February 2013, the trial court ordered payments to the Internal Revenue Service (IRS) from the parties' E-trade account that was escrowed with Weston's attorneys to avoid a tax lien. Also in February 2013, both Mary Robin and Weston both filed motions for a rehearing and modification of the judgment of dissolution. On September 5, 2013, Weston filed an amended petition to apportion the marital tax liabilities. Also in September, the trial court found that the December 31, 2012, order controlled regarding the dates the interest and payment on the equalizing payment due were due.

¶ 25 On September 30, 2013, the trial court granted Mary Robin's motion to reconsider and made oral findings to modify the judgment of dissolution. The trial court issued a written order on November 26, 2013, which provided that an equalizing payment of \$350,000 was to be paid to Mary Robin by Weston on or before December 31, 2013, with the balance of the \$884,688 total due by December 31, 2014. Interest was to accrue on the equalizing payment at 9% per year from December 31, 2012, the date the judgment of dissolution was entered. The order further provided that if Weston paid Mary Robin the initial \$350,000 payment by December 31, 2013, no interest would accrue on that amount. Weston was to be credited against the remaining balance for any mortgage payments he made after December 31, 2012, and Mary Robin was to release Weston from the mortgages within 120 days of the mortgage payoffs.

¶ 26 Mary Robin filed a petition for rule to show cause in January 2014 for Weston's failure to pay the \$350,000 by December 31, 2013, as ordered. A rule issued on January 22, 2014. Mary Robin filed a motion in November 2014, seeking to set a hearing on her motion for rule to show cause.

¶ 27 On January 23, 2015, the trial court entered an order allocating the tax liabilities. The tax liabilities were for \$1,771,528 in undisclosed income and were to be paid in four installments of \$442,882 in tax years 2010 through 2013. The trial court allocated the taxes on the undisclosed income for the marital years equally between the parties, with each responsible for a tax payment of \$312,498.36. In addition, Mary Robin and Weston were each required to pay \$18,824 for one half the tax liability on in capital gains earned in 2010. Mary Robin's total tax liability was \$331,322.36. Weston was allocated the tax on actual income earned during the marital years and for 2013. He was also allocated the penalties, interest and collection fees.

¶ 28 The trial court found that the escrow account was substantially depleted by the court-ordered payments to the IRS. The court stated that the division of the marital estate remained appropriate even though the tax liabilities might “change the percentage division.” It requested the parties submit exhibits reflecting the recalculation of the balance sheet distributing the marital estate distribution.

¶ 29 Both parties submitted memorandums and balance sheets based on the tax liabilities. In June 2015, the trial court amended the judgment of dissolution to require Weston to pay Mary Robin an equalizing amount of \$674,421. It found no interest would accrue from December 31, 2012, through June 8, 2015. The trial court stated it agreed with Weston’s amended exhibits and reasoning regarding the balance sheet. It noted the tax allocation changed the overall division of the marital estate and Weston’s balance sheet was more aligned with the trial court’s original determination on the property division. The trial court stated that it was amending its December 31, 2012, order regarding the equalizing payment. The trial court also noted the issues yet to be determined included the timing of the equalization payment and interest calculations. Mary Robin timely appealed.

¶ 30 ANALYSIS

¶ 31 Mary Robin raises six issues on appeal. First, Mary Robin argues that the trial court’s equal division of a portion of the parties’ tax liabilities was improper where she had no income, Weston grossed \$750,000 annually, the liquid assets awarded to her were depleted by the IRS payments, Weston was solely responsible for creating the tax liabilities, and she did not benefit from his failure to properly report personal income.

¶ 32 The trial court divides marital property in “just proportions” after considering the following factors, in relevant part: (1) each party’s contribution to acquiring, preserving,

increasing or decreasing the marital and non-marital estates, including any advances taken from the estate and the contribution of a spouse as homemaker; (2) any dissipation by a spouse of marital or non-marital property; (3) the value of property assigned to each spouse; (4) the marriage's duration; (5) each spouse's relevant economic circumstances when the property division becomes effective, including the desirability of awarding the marital home or the right to live in it to the spouse with custody of the children; (6) any rights or obligations arising from a party's prior marriage; (7) any antenuptial agreement; (8) each party's age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liability, and needs; (9) custody provisions; (10) whether the property apportionment is in lieu or in addition to maintenance; (11) the parties' reasonable opportunities for future acquisition of capital assets and income; and (12) the tax consequences of the property division on the parties' respective economic circumstances. 750 ILCS 5/503(d)(1)-(12) (West 2012).

¶ 33 Marital property includes all property that was acquired by either spouse during the marriage, including debts and other obligations. 750 ILCS 5/503(a) (West 2012). Any property acquired by either spouse during the marriage and before a judgment of dissolution is entered is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2012). Marital assets and debts must be distributed equitably. *In re Marriage of Lees*, 224 Ill. App. 3d 691, 693 (1992). This court will not disturb a trial court's distribution of marital assets absent an abuse of discretion. *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 822 (2007).

¶ 34 Mary Robin challenges the trial court's allocation of any of the tax liabilities to her, submitting that the statutory factors do not support the trial court's distribution of a portion of the tax debt to her. She asserts Weston was solely responsible for decreasing the marital estate by causing the tax liability and should be solely responsible for paying the back taxes.

¶ 35 To account for Weston’s role in failing to report the income, the trial court allocated the penalties, interest, and collection fees to Weston. Additionally, he was ordered to pay the taxes on income earned during the marital years, 2010-2012, as well as the taxes on his 2013 income. The trial court observed that Mary Robin was not free from responsibility for the undisclosed income and her lack of knowledge regarding the tax liabilities does not negate her responsibility to pay them. She received a weekly check from the business despite not being employed there. The business paid her credit cards in full each month. Her prior employment afforded her some knowledge that taxes are due and owing on income earned. The court accepted Mary Robin's position that the business was marital property and divided its value along with the other marital assets. Therefore, it was not improper for the court to assess both the liabilities and benefits of the business to Mary Robin.

¶ 36 The trial court considered that Mary Robin benefitted from the untaxed income during the marital years during which time she and Weston purchased the marital home, the summer home in Michigan, a cabin in Maine, property in New Hampshire, the Harvey property, and the Indiana home. The trial court characterized the parties’ lifestyle as “very, very comfortable,” a lifestyle both Mary Robin and Weston enjoyed due, in part, to their use of money that should have been paid as taxes. See *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 832 (1994) (finding wife was party to lavish lifestyle and benefitted from failure to pay taxes). The trial court’s findings based on the specific statutory factors about which Mary Robin complains were supported by the evidence. We cannot say the court's decision to equally allocate the tax liability for income undisclosed during the marital years was an abuse of discretion.

¶ 37 Mary Robin next argues that using the portion of the escrow account that had already been awarded to her to pay joint debt unfairly depleted her only liquid assets and in so doing reduced only her portion of the property award.

¶ 38 We will begin by addressing whether the court erred in using the liquid assets in the escrow account to satisfy the tax liability. The marital estate was mostly non-liquid assets, except for the escrow account. This was due in large part to Weston's cash purchase of his Indiana home for \$640,000 and his \$520,000 cash purchase of the pizza chain warrants. Those purchases were made from marital funds after the breakdown of the marriage. Although originally awarded 60% of the escrow account in the amount of \$623,932.92, Mary Robin did not receive a lump sum payment from that account as contemplated by the judgment because the trial court determined that liquid asset would be utilized to pay the tax liability in order to avoid a tax lien. In addition, Mary Robin had already received monies from the escrow account that were considered pre-judgment distributions, so she had already accessed some of the liquid assets she was going to receive. Throughout the course of the proceedings, this account was recognized to be a source from which bills could be paid. See *In re Marriage of Kerber*, 215 Ill App 3d 248, 254-55 (1991) (trial court properly considered liquidity of assets in dividing martial estate). Both parties derived a benefit from having the tax liability satisfied and as such it was not an abuse of discretion to order the tax liability to be paid from the escrow account because of its nature as a liquid asset.

¶ 39 The second issue is whether the trial court erred in delaying the interest payment due to Mary Robin from Weston on the equalizing payment. Mary Robin argues that the trial court erred in not requiring Weston to pay interest on the equalizing statement as ordered in the judgment of dissolution. We agree.

¶ 40 The trial court may order 9% per year interest be paid on judgments from the date of judgment to the date of payment in full. 735 ILCS 5/2-1303 (West 2012). Courts impose interest to encourage a payor spouse to pay the amount due the other spouse “without undue delay.” *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 141 (2008). Where a delay in payment is not attributable to the payor spouse, the trial court may refuse to order interest to accrue from the time of the original judgment. *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 661 (2002). The trial court’s decision whether to award interest on a dissolution judgment is reviewed for an abuse of discretion. *Polsky*, 387 Ill. App. 3d at 141.

¶ 41 In the judgment of dissolution entered December 31, 2012, the trial court valued the marital estate and set the equalizing payment due to Mary Robin from Weston at \$884,688.07. The court entered a supplemental order also on December 31, 2012, requiring the payment be made within two years. Interest was stayed for six months and was then to accrue at 9% annually. On November 26, 2013, the trial court modified the judgment and ordered Weston to pay \$350,000 of the equalizing payment by December 31, 2013, and if timely paid, no interest would accrue on the \$350,000. Interest would continue to be due on the remaining amount. While there remained some dispute over the total amount due from Weston to Mary Robin in equalization payments, there was never any dispute that Weston would owe Mary Robin substantially more than \$350,000. See *Carrier*, 332 Ill. App. 3d at 660-61 (finding husband properly ordered to pay interest where he delayed in transferring assets per judgment of dissolution). On June 8, 2015, the trial court entered an order in which it amended the judgment of dissolution and reduced the equalizing payment to \$674,421. It did not impose interest on the payment for the period between December 31, 2012 and June 8, 2015, finding Weston was not solely responsible for the delay in calculating the final amount of the equalizing payment.

¶ 42 In its June 2015 order, the trial court found that interest was not appropriate because the delay in determining the amount due Mary Robin was not Weston's sole responsibility. This ruling ignores the previous determination that Weston alone was responsible for the income tax miscalculations and underpayments. Since the delay in determining the amount of the equalization payment due to Mary Robin was because of the tax liability, it was error not to find Weston solely responsible for the delay. The trial court's previous order had provided a schedule for payment of the equalizing amount as well as setting forth when interest would accrue. While interest was initially stayed for six months, or until May 31, 2013, and also stayed on the \$350,000 payment for a period, the court ordered that interest would accrue at 9% annually on the remaining portion beginning in May 2013. Weston made no payments on the equalizing amount or the interest. We find the trial court should have required Weston to pay interest as set forth in its order of November 26, 2013, and its refusal to do so to be an abuse of discretion.

¶ 43 The third issue is whether the trial court erred in finding Weston's racing expenditures did not constitute dissipation. Mary Robin argues Weston dissipated marital funds on his racing hobby and those amounts should have been charged against him in the property division.

¶ 44 Dissipation is the use of marital property by one spouse for his own benefit and for a purpose unrelated to the marriage during a time the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 197 (1992). Spending marital funds on a hobby in which the complaining spouse participates and enjoys is not dissipation. *In re Marriage of Reeser*, 97 Ill. App. 3d 838, 841 (1981). A trial court's findings regarding dissipation will not be reversed unless they are against the manifest weight of the evidence. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007).

¶ 45 In dividing the marital property, the trial court found there was a “modest” amount of dissipation, which did not include the racing expenditures. The court also expressly found that Weston’s racing was not a purpose unrelated to the marriage. The trial court considered that racing was Weston’s hobby and Mary Robin was aware of Weston’s racing hobby prior to the marriage, participated in it as a “light crew member” and traveled to races and on racing-related trips as late as 2007. See *In re Marriage of Miller*, 342 Ill. App. 3d 988, 996 (2003) (expenditures on marital assets do not constitute dissipation). Although the court found the marriage began its irreconcilable breakdown in January 2008, Mary Robin and Weston continued to engage in family activities until he moved out in October 2008, including several out-of-state trips. See *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 983-84 (1992) (whether conduct is dissipation depends on fact and circumstances of each case). Weston’s racing hobby was a continuation of his usual activities as demonstrated throughout the marriage, albeit with the eventual disapproval of Mary Robin. We find the trial court’s finding that Weston’s racing expenses were not dissipation was not against the manifest weight of the evidence.

¶ 46 The fourth issue is whether the trial court erred in awarding Mary Robin three years of maintenance at \$5,000 per month, reviewable on her motion. Mary Robin argues that the trial court’s maintenance award is inadequate based on the circumstances of the parties’ marriage and the standard of living they enjoyed during the marriage. She points to Weston’s gross income of \$750,000 as disparate to the \$60,000 per year in maintenance he was ordered to pay to her.

¶ 47 The trial court is to consider a number of factors in making a determination of maintenance, including (1) each party’s income and property, including the marital property and nonmarital property awarded; (2) each party’s needs; (3) each party’s present and future earning capacity; (4) the impairment to the ability of the party seeking maintenance to acquire present

and future earnings due to having devoted time to the household or children; (5) the time required for the party seeking maintenance to acquire education, skills and employment, and whether the party will be able to support herself through employment; (6) the standard of living established during the marriage; (7) the marriage's duration; (8) the parties' age and physical and emotional conditions; (9) the tax consequences of the property division on the parties' respective economic circumstances; (10) contributions of the party seeking maintenance to the other party's education, training or career; (11) any valid agreement between the parties; and (12) any other factor the trial court expressly finds just and equitable. 750 ILCS 5/504(a)(1)-(12) (West 2010).

¶ 48 The trial court is not required to make specific findings regarding each factor and does not need to give each factor equal weight. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1004 (2008). The benchmark for a maintenance determination is the reasonable needs of the recipient considering the standard of living established during the marriage. *In re Marriage of Culp*, 341 Ill. App. 3d 390, 398 (2003). This court will not reverse a trial court's maintenance decision unless it was an abuse of discretion. *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 59.

¶ 49 The trial court considered the short duration of the marriage as a basis for its award of a three-year maintenance term. The court noted Mary Robin had failed to take any affirmative actions to become self-sufficient from the time the parties separated in 2008 through at least April 2011. The fixed term was an appropriate means to urge Mary Robin to "assiduously seek employment," either immediately or after furthering her education. The trial court made the award reviewable in acknowledgement that Mary Robin's other responsibilities might extend the time it would take for her to finish her education and achieve financial self-sufficiency. See *In re*

Marriage of Murphy, 359 Ill. App. 3d 289, 305-06 (2005) (finding wife had good faith obligation to become self-sufficient and affirming two-year maintenance award).

¶ 50 In fashioning the maintenance award, the trial court considered several years of Weston's income, averaged it to reach a gross income of \$750,000 and calculated an estimated net income of \$460,000 for Weston. Although Mary Robin argues Weston is left with \$570,000 annually, her figures do not correspond with the trial court's calculations. Weston's income and expense affidavit indicate his monthly expenses exceed his income by nearly \$1,700. The child support and maintenance payments were not included in his calculations and further reduce his income by \$180,00 per year. Mary Robin's third amended income and expenses affidavit dated October 2010 provides that her monthly expenses amount to \$14,119. The calculations include expenses for both Mary Robin and the children and is sufficiently covered by the \$15,000 per month Weston must pay to Mary Robin. We find there was no error by the trial court in the amount or term of maintenance awarded Mary Robin.

¶ 51 The fifth issue is whether the trial court erred in setting the child support amount below the statutory guideline. Mary Robin complains that the trial court's downward deviation was inappropriate and that the amount of child support was insufficient to maintain the lifestyle the children enjoyed during the marriage. Mary Robin also argues that the trial court did not adequately explain the reasons for its deviation from the guidelines.

¶ 52 The statutory guidelines for child support for three children is 32% of the payor's statutory net income. 750 ILCS 5/505(a)(1) (West 2012). The trial court may deviate from the guidelines where appropriate after considering the best interest of the children and the following factors: (a) the child's financial resources and needs; (b) the custodial parent's financial resources and needs; (c) the standard of living the child would have enjoyed had her parents not

divorced; (d) the child's physical, mental, and educational needs; and (e) the non-custodial parent's financial resources and needs. 750 ILCS 5/505(a)(2)(a)-(e) (West 2012). Where the court deviates from the guidelines, it must state the statutory amount of support and the reasons it deviated from the guidelines. 750 ILCS 5/505(a)(2) (West 2012).

¶ 53 The support of a child is the obligation of both parents. *In re Marriage of Turk*, 2014 IL 116730, ¶ 14. A downward deviation may be appropriate where the parties' incomes are more than sufficient to provide for the child's reasonable needs. *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 30. When a parent has a high income, the trial court balances the concerns that the child support will be a windfall to the custodial parent and the standard of living the children would have enjoyed had their parents remained married. *Hill*, 2015 IL App (2d) 140345, at ¶ 30. This court reviews a trial court's determination to deviate from the statutory child support guidelines for an abuse of discretion. *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391 (1990).

¶ 54 We agree with the trial court that the \$10,000 per month it awarded in child support was sufficient to meet the children's monthly needs considering the standard of living they enjoyed during the marriage. Mary Robin's monthly income from child support and maintenance exceeded the monthly expenses she and the children incurred. Her third amended affidavit stated that the children's monthly needs, excluding food and other household costs amounted to \$2,006.53. Weston paid the insurance costs for the children and the majority share of uncovered medical expenses and \$750 per year for each child for extracurricular activities.

¶ 55 The guidelines set the support at \$12,802 per month. The trial court deemed that amount inappropriate and a windfall to Mary Robin. Since the children's needs were being adequately met with the lower child support amount, awarding Mary Robin additional child support would constitute a windfall to her and would not necessarily benefit the children. Mary Robin's claim

that the child support award was insufficient to maintain the lifestyle enjoyed before the divorce was not supported by the evidence. See *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 395 (2002) (finding statutory amount of child support would result in windfall and that lesser amount satisfied children's financial and lifestyle needs). The income and expense affidavit indicated that the children were continuing to enjoy educational, extracurricular activities and travel. We find the trial court did not err in deviating downward in setting the amount of child support.

¶ 56 The sixth and final issue is whether the trial court's final distribution of the marital estate, including the reduced equalizing payment, was in error. Mary Robin argues the trial court erred in adopting Weston's balance sheet after accounting for the tax liabilities. She maintains that under Weston's calculations, she paid twice for her share of the tax liability and is owed \$121,713.04 from the escrow account.

¶ 57 The trial court determined the value of the marital estate and its distribution on December 31, 2012. Both parties filed motions to reconsider the judgment. Of relevance to this issue is Weston's motion to reconsider. Specifically with regard to the property division, Weston asked the trial court to reconsider whether Mary Robin should receive more than 50% of the marital estate, whether the trial court had counted the value of the Harvey property twice, and last whether the trial court erred in finding the business was marital property. There was no challenge made to the value of any other assets. See *Johnson v. Johnson*, 267 Ill. App. 3d 253, 257 (1994) (property division provisions are vested rights and trial court cannot modify them more than 30 days after judgment of dissolution is entered). The court heard the parties' arguments which included Weston's estimation that the total tax liability was going to be around 1.3 million dollars. After considering all the evidence, the trial court denied Weston's motion to reconsider

and specifically rejected Weston's arguments on all three of these points and reiterated that Mary Robin was to receive the assets as set out in the judgment entered December 31, 2012.

¶ 58 Both the court's ruling on the motion to reconsider and the language of the judgment make it clear that the value of the marital estate and its division between the parties was not dependent on the amount of the tax liability or its division between the parties. See *In re Marriage of Ward*, 267 Ill. App. 3d 35, 43 (1994) (finding fact that wife may owe taxes did not alter distribution of marital estate). At the time of the entry of the judgment, the trial court was aware that there was potential tax liability but considered it speculative, and therefore only the determination of how much of the tax liability each party would be responsible for paying was reserved for later determination. The judgment did not provide for holding any sums in escrow or trust for the payment of taxes but rather divided the assets without reservation. Even after hearing evidence that the total tax liability would be close to \$1.3 million, the trial court still maintained the original asset division. See *In re Marriage of Hawkins*, 160 Ill. App. 3d 71, 79 (1987) (inappropriate for trial court to consider speculative, future tax liabilities). It appears that it was nothing more than a coincidence that Weston became aware of the amount of the tax liability after the entry of the judgment but prior to the distribution of the escrow account. But for that coincidence, the escrow account would have been distributed to the parties as set out in the judgment prior to a hearing on the reserved issue.

¶ 59 If, as contemplated by the judgment, the tax liability would have become known after the release of the escrowed funds to the parties, Weston would have been required to either pay cash or encumber another of his assets in order to satisfy his portion of the tax debt. However, because there was cash in the escrow account, Weston was able to encumber Mary Robin's asset to satisfy part of his debt. To later classify that encumbrance as a reduction in value was an abuse

of the trial court's discretion. See *In re Marriage of Toole*, 273 Ill. App. 3d 607, (1995) (trial court did not err in requiring husband to reimburse marital estate for taxes he owed on non-marital property). Mary Robin was awarded 60% of the escrow amounting to \$623,932.92. After subtracting \$122,226.42 in pre-distributions made to her, her portion of the tax liability in the amount of \$331,322.36, and a \$48,661.10 credit to Weston for mortgage and tax payments, Mary Robin is owed \$121,713.04 from escrow account. In addition, Weston owes the full amount of equalizing payment of \$884,688.07, less any amounts he has paid during the pendency of the appeal. In total, Mary Robin is owed \$1,006,401.11 from Weston pursuant to the judgment of dissolution. In addition, he owes \$194,146.61 in interest accrued through June 8, 2015. We remand the case to the trial court for the purpose of entering judgment against Weston in the amount of \$1,200,547.72.

¶ 60 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part, reversed in part and remanded.

¶ 61 Affirmed in part, reversed in part and remanded.