2017 IL App (3d) 160247-U

Order filed March 8, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
CLYDE R. HOBBY III,	)	Rock Island County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-16-0247
and	)	Circuit No. 05-D-508
	)	
MARTHA W. HOBBY,	)	
	)	Honorable James G. Conway, Jr.,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in attributing cash gifts received by petitioner as income for purposes of calculating her need for maintenance. (2) The trial court did not abuse its discretion in reducing the maintenance award. (3) The unsuccessful appellate is not entitled to remand for attorney fees and costs.

¶ 2 Respondent, Martha W. Hobby, appeals from the trial court's order reducing the maintenance obligation of petitioner, Clyde R. Hobby III. Specifically, she contends that (1) the trial court erred in considering gifts she received as income, (2) the trial court erred in reducing

Clyde's maintenance obligation, and (3) this court should award her attorney fees and costs in prosecuting this appeal. We affirm.

¶ 3 FACTS

¶ 4 The parties married in June 1973. They have three adult children. In September 2005, Clyde filed a petition for dissolution of marriage. In October 2007, the trial court entered a judgment of dissolution. In its judgment, the court awarded Martha maintenance in the amount of $3000 per month "reviewable upon a change in [Clyde's] employment status and/or income." It also ordered Clyde to provide healthcare and dental insurance for Martha at his own expense "so long as it is available to him," and to maintain a $500,000 term life insurance policy naming Martha the sole beneficiary. In addition, the court awarded each party 50% of (1) Clyde's military pension, (2) the parties' Merrill Lynch investment accounts, (3) the parties' checking and savings accounts, and (4) the parties' treasury bonds. Martha was awarded an additional $45,392 from Clyde's share of the Merrill Lynch accounts in exchange for Clyde receiving $90,000 from a thrift and savings plan. The court further awarded Martha the marital residence and a 2001 Chrysler van, while Clyde received a condominium and a 2000 Ford SUV.

¶ 5 In March 2010, Clyde filed a petition seeking to terminate and/or reduce maintenance. He sought to terminate or reduce his maintenance obligation effective May 15, 2011—the date he intended to retire from his career in the United States Armed Forces. In May 2010, Martha filed a petition to modify maintenance, asserting a substantial change in circumstances warranted an increase in maintenance. In October 2010, the trial court denied both petitions, finding (1) Clyde's petition premature as it related to his retirement, (2) that Clyde's ability to pay the maintenance award had not changed, and (3) that Martha's needs had not changed so as to justify an increase in maintenance.

¶ 6 In February 2014, Clyde again filed a petition to terminate and/or reduce maintenance. He sought the termination of maintenance as of May 2, 2014—the date he intended to retire—or, in the alternative, a substantial reduction in his maintenance obligation as of that date.

¶ 7 In June 2014, Martha filed a petition for rule to show cause as to why Clyde should not be held in indirect civil contempt due to his failure to comply with the trial court's dissolution judgment. In particular, she alleged Clyde failed to provide her with healthcare and dental insurance.

¶ 8 A hearing on Clyde's petition to terminate or modify maintenance was held over two days in June and July 2014. The following evidence was elicited during the two-day hearing.

¶ 9 Martha, who was 62 at the time of the hearing, testified that she lived alone in a four-bedroom house in Tennessee. She graduated from college in 1973 with a degree in elementary education. During the marriage, she secured teaching jobs in Germany and South Korea while Clyde was stationed in those countries. In 2001, she and Clyde moved to the Quad Cities, Illinois, area where Martha worked at a flower shop for "a few months."

¶ 10 Martha testified that at the time of the dissolution of her marriage, she was unemployed. From November 2007 through December 2010, she worked at a flower shop in Clarksville, Tennessee, earning $9 per hour. During the first two years of her employment, she worked 40 hours per week. During the third year, she worked 21 to 40 hours per week depending on when the owner let her. She testified her gross monthly income during that three-year period was $1025.

¶ 11 According to Martha, since March of 2014, she had worked seasonally at a different flower shop, *i.e.*, one week in February and one week in May for Valentine's Day and Mother's

Day. She had also submitted applications to two other flower shops, but neither were hiring. She testified that she had sought no other employment during the last two years.

¶ 12 Martha testified that she could receive $700 per month in social security benefits if she applied now, but she had not yet done so because she could receive "substantially more" if she waited until she turned 66 years old. She agreed that she was receiving 50% of Clyde's pension, which totaled approximately $3265 per month after taxes. Martha further testified she had taken no steps to become financially self-sufficient. Since the dissolution of her marriage, she had sought neither further education nor training to enhance her employment prospects. Further, although she had been diagnosed with Type II diabetes, Martha had no health conditions that prevented her from furthering her employment or education.

¶ 13 According to Martha's most recent financial affidavit dated May 22, 2014, her net monthly income equaled $5916.56 (after tax corrections). Her monthly living expenses equaled $5340.21. Martha stated that almost all of the $1700 she listed as a monthly "entertainment" expense went to gambling. She agreed her gambling had increased since her marriage dissolved and that she gambles 8 to 10 days per month. In 2013, Martha took a $7500 credit card cash advance for gambling purposes.

¶ 14 During the hearing, Martha's bank statements from USAA Federal Savings Bank (USAA Bank) covering the periods between January 23, 2012, and March 24, 2014, were introduced into evidence as exhibit No. 8. This exhibit is not contained in the record before us. Martha testified regarding numerous withdrawals from this account from automated teller machines located in Harrah's casinos.

¶ 15 Finally, Martha testified that in addition to her home in Tennessee for which she pays a monthly mortgage payment of $1490, she also owns a second home in Georgia for which she

pays a monthly mortgage payment of $465. Although her brother has been living in the Georgia home rent free, Martha "doubt[ed]" she could rent the Georgia home for profit because "[t]here's no market in Ashburn, Georgia."

¶ 16 Clyde, who was 63 years old at the time of the hearing, testified that he resided with his wife, Susan Davidson, and two of her adult children at Scott Air Force base in Illinois. He received a bachelor's degree in 1973. Following his graduation, he became a commissioned officer in the United States Army, retiring in December of 2002. A few months prior to his retirement, in September 2002, Clyde began working for the Department of Defense as an environmental physical scientist. In May of 2005, he was promoted to an operations officer position.

¶ 17 Clyde testified that he received $3733 per month from his army pension, $1139 disability pay per month, and $2092 per month from an annuity. He stated his annual gross income was $167,835 in 2010; $162,687 in 2011; $167,865 in 2012; and $153,863.04 in 2013. He retired from his employment with the Department of Defense in 2014 so that he could move to St. Louis with his family. According to Clyde, his foreseeable gross monthly income at the time of the hearing was $6691 per month. His financial disclosure statement dated June 2, 2014, indicated a monthly net income of $3712.87 (after paying the court-ordered maintenance) while his monthly expenses totaled $15,519.27. During the hearing, Clyde testified that his current wife helped with the monthly expenses. He agreed that $5000 in the listed monthly expenses related to college expenses of his stepchildren. One of those children had recently graduated, eliminating one $2500 monthly payment. Clyde further agreed that he was no longer in need of dental treatment, thus reducing the monthly expenses listed on his disclosure statement an additional $750 per month (from $800 to $50). He stated he had no intention of returning to the workforce.

¶ 18 In August 2014, the trial court issued its written order, denying Clyde's request to terminate maintenance, but granting his request to reduce maintenance. In its order, the court noted that "Exhibit [No.] 8 includes a series of otherwise unexplained deposits into [Martha's] [USAA] checking account *** between January 3, 2012[,] and March 24, 2014." The court calculated these "unexplained deposits" to total $72,634, which it then divided by 14 months and came up with an average per month cash flow from these deposits of $404. Thereafter, the court determined Martha's net monthly income to be $3594 without maintenance while her monthly expenses totaled $5840, leaving a "lifestyle deficit" of $2261. As such, the court reduced Clyde's monthly maintenance obligation to $2261 per month, retroactive to June 1, 2014.

¶ 19 In September 2014, Clyde filed a motion to reconsider the trial court's August 2014 written order, asserting the court miscalculated Martha's average monthly cash flow derived from the unexplained deposits totaling $72,634. Specifically, he contended the court calculated the average monthly cash flow at $404 per month when it should have been $4842 per month. According to Clyde, Martha's monthly net income (without maintenance) was $7019 per month and she enjoyed an actual "lifestyle surplus" of $1179, negating her need for continued maintenance.

¶ 20 In December 2014, Martha responded to Clyde's motion in which she (1) asked the trial court to reopen the evidence in order to establish the deposits were either gifts or proceeds from the refinancing of her home, and (2) challenged the court's use of the unexplained deposits as income since "[t]here was no testimony in the record that stated that these amounts deposited constituted income earned from any source by [Martha]." Attached to her response was a personal affidavit in which she averred the deposits at issue were not income, but were either gifts from her aunt or proceeds received from the bank when she refinanced her home.

¶ 21 In March 2015, the trial court conducted a hearing on Clyde's motion to reconsider and Martha's request to reopen the evidence. Martha testified she had refinanced her Georgia home for $54,000, and that she received $29,039 in cash from the refinance, which was deposited into her checking account. She further testified she had received several monetary gifts from her aunt between 2012 and 2014 in the form of checks written to Martha and her daughters. Some of the checks were written to Martha's daughters—which were then endorsed over to Martha—because Martha's aunt had already gifted her "the amount that she could give [her]" for tax purposes, *i.e.*, $13,000. According to Martha, the gifts, which totaled $48,546, were to pay for dental care, porch repairs, and care for her disabled brother.

¶ 22 In April 2015, the court entered a corrected opinion and order. In the corrected order, the court determined that $48,546 of the previously unexplained deposits were gifts which were properly considered as income. It then divided $48,546 by 21 months to come up with an average monthly cash flow from the gifts of $2312. The court next found Martha's corrected net income without maintenance equaled $3135 per month, while her monthly expenses totaled $5840, for a "lifestyle deficit" of $2720. Thereafter, the court reduced Clyde's maintenance obligation to $2720 retroactive to June 1, 2014.

¶ 23 In May 2015, Clyde filed a motion to reconsider the trial court's April 2015 corrected opinion and order. He asserted the court again miscalculated Martha's net monthly income and that her monthly net "lifestyle deficit" should be $262. Martha filed a response, contending the court erred in reducing Clyde's maintenance obligation.

¶ 24 In August 2015, the trial court entered its corrected opinion and order. It attributed the $48,546 in gifts as income and recalculated Martha's net monthly income to be $5578, thus

making her "lifestyle deficit" $262 per month. It then reduced Clyde's maintenance obligation to $262 per month, retroactive to June 1, 2014.

¶ 25 In September 2015, Martha filed a motion to reconsider and reopen evidence. Following an October 21, 2015, the trial court denied Martha's motion to reconsider and reopen the evidence. (We note that earlier that morning, Martha filed a petition to modify maintenance, asserting a substantial change in circumstance warranting an increase in maintenance.)

¶ 26 This appeal followed.

¶ 27 ANALYSIS

¶ 28 On appeal, Martha asserts that (1) the trial court erred in considering gifts she received as income, (2) the trial court erred in reducing Clyde's maintenance obligation, and (3) this court should award her attorney fees and costs in prosecuting this appeal.

¶ 29 Before addressing the merits of this appeal, we note Martha has failed to comply with Illinois Supreme Court Rule 341(h)(3) (eff. Jan. 1, 2016), which requires her to provide this court with the "applicable standard of review for each issue, with citation to authority." In her brief, Martha makes one statement concerning the standard of review, *i.e.*, "that the trial court abused its discretion in attributing unexplained deposits into [her] bank accounts as income." Not only is this the only reference to a standard of review in her brief, but she also fails to cite any applicable authority.

¶ 30 "[T]he rules of procedure for appellate briefs are rules, not mere suggestions, and it is within our discretion to strike a brief and dismiss an appeal for failure to comply with the rules." *Freedman v. Muller*, 2015 IL App (1st) 141410, ¶ 22. Here, however, the deficiencies in Martha's brief as to the appropriate standard of review do not hinder our effective review. Thus, we will consider the merits of Martha's appeal.

¶ 31 I. The Trial Court's Attribution of Bank Deposits as Income

¶ 32 A. The Trial Court's *Sua Sponte* Consideration of Unexplained Deposits

¶ 33 Martha first argues that the trial court erred by *sua sponte* raising the issue of deposits made to her bank account when neither party addressed the deposits at trial, and then assuming, without evidentiary proof, the deposits represented income.

¶ 34 At the outset, we note Martha has forfeited any issue with the trial court's *sua sponte* consideration of the deposits at issue. Although she challenged the court's initial attribution of the deposits as income in her response to Clyde's motion to reconsider, asserting "[t]here was no testimony in the record that stated that these amounts deposited constituted income earned from any source by [Martha]," she abandoned this argument once her motion to reopen proofs was granted. At the hearing on her motion to reopen proofs, Martha presented evidence explaining that the deposits were gifts from her aunt and proceeds from the refinancing of her Georgia home.

¶ 35 Forfeiture aside, in considering whether to terminate or modify maintenance, a court is to consider "the income *** of each party," including any "increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought." 750 ILCS 5/504, 510(a-5)(7) (West 2012). In this case, the trial court had before it copies of Martha's bank statements showing a substantial amount of deposits in the two years preceding the hearing, which she had not accounted for. It was not unreasonable for the court to infer that these deposits were income, especially where Martha provided no evidence to the contrary.

¶ 36 B. The Trial Court's Reliance on *In re Marriage of Rogers*

¶ 37 Martha next contends that the trial court erred by relying on *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004), in order to attribute the gifts she received as income.

¶ 38 We begin with a brief discussion of *Rogers*. At issue in that case was whether annual cash gifts and "loans" (which did not have to be paid back and were loans in name only) received by the father qualified as "income" under section 505 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/505 (West 2002)) for purposes of calculating his statutory child support obligations. *Rogers*, 213 Ill. 2d at 131. Because section 505 of the Marriage Act did not define "income", the supreme court relied on its plain and ordinary meaning as defined in the dictionary, *i.e.*, " 'something that comes in as an increment or addition ***: a gain or recurrent benefit that is usu[ally] measured in money ***: the value of goods and services received by an individual in a given period of time' "; or " '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts and the like.' " *Id*. at 136-37 (quoting Webster's Third New International Dictionary 1143 (1986); Black's Law Dictionary 778 (8th ed. 2004)). Based on these definitions of "income," the court concluded the annual gifts at issue "represented a valuable benefit to the father that enhanced his wealth," and therefore, were properly considered by the trial court as "income" under section 505(a)(3) of the Marriage Act. *Id.* at 137.

¶ 39 Similar to the issue in *Rogers*, the issue here is whether cash gifts received by Martha qualify as income for purposes of calculating whether Martha's maintenance award should be reduced under section 510(a-5)(7) of the Marriage Act (750 ILCS 5/510(a-5)(7) (West 2012)). This issue presents a legal question which we review *de novo*. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182 (2005).

¶ 40 "The fundamental rule of statutory interpretation is to give effect to the intention of the legislature." *Rogers*, 213 Ill. 2d at 136. "The best indicator of the legislature's intent is the plain language of the statute." *Id*. "Courts must give clear and unambiguous terms in a statute their plain and ordinary meaning." *Bremer v. Leisure Acres-Phase II Housing Corp.*, 363 Ill. App. 3d 581, 584 (2006).

¶ 41 Here, the legislature did not define the term "income" in section 504 (entitlement to maintenance) or section 510 (modification or termination of maintenance) of the Marriage Act. 750 ILCS 5/504; 5/510 (West 2012). Because the term "income" is clear and unambiguous, we must give it its plain and ordinary meaning as was the case in *Rogers*. Although Martha attempts to distinguish the facts at issue here by noting, "the *Rogers* decision applies to child support determination and never has, [*sic*] Section 504 been interpreted by the courts in the manner in which sporadic gifts to the maintenance recipients are income," we agree with the trial court that this "is a distinction that makes no meaningful difference." Accordingly, we adopt the definitions of income provided in *Rogers*. Based on these definitions, we find that cash gifts received by a party are properly computed as income for purposes of calculating whether a party's maintenance award should be modified under section 510(a-5)(7) of the Marriage Act (750 ILCS 5/510(a-5)(7) (West 2012)).

¶ 42 Martha also argues the facts in this case are distinguishable from those in *Rogers* because the gifts in *Rogers* were distributed annually from the time the father reached adulthood, whereas the gifts to her were only received during a period of "less than two years." As noted by our supreme court, however, "the relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made." *Rogers*, 213 Ill. 2d at 138. This is so because "[f]ew, if any, sources of income are certain to continue unchanged year in and year out.

People can lose their jobs, interest rates can fall, business conditions can wipe out profits and dividends." *Id*. Accordingly, "[i]f a parent has received payments that would otherwise qualify as 'income' under the statute, nothing in the law permits those payments to be excluded from consideration merely because like payments might not be forthcoming in the future." *Id*.

¶ 43 With this principle in mind, we find the relevant inquiry for determining Martha's income under section 510(a-5)(7) of the Marriage Act is her economic situation at the time of the June/July 2014 hearing. The record shows that in the two years preceding the hearing, *i.e.*, from January 3, 2012, through March 24, 2014, Martha received $48,546 in gifts from her aunt. Although in her brief Martha attempts to classify these gifts as "conditional loans" that were gifted for a particular purpose, *e.g.*, dental work, fixing the front porch, providing care for her disabled brother, she agreed these gifts did not have to be paid back. Accordingly, they were gifts, not loans. As in *Rogers*, the gifts here "represented a valuable benefit" to Martha that "enhanced her wealth." The mere possibility that like gifts may not be as forthcoming in the future is irrelevant for purposes of considering her income during the applicable period. As such, we find that the trial court did not err by including Martha's gifts in its calculation of her income.

¶ 44 Finally, we note that Martha argues for the first time in her reply brief that the trial court's treatment of the gifts as income ignores the Internal Revenue Code's definition of "gross income." An argument raised for the first time on appeal in the reply brief need not be addressed by this court. *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29 (quoting Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (" 'Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.' ")). Waiver aside, this issue was specifically rejected by the *Rogers* court, which recognized "income" under section 505(a)(3) of

the Marriage Act could include a variety of payments which would not otherwise qualify as "income" under the Internal Revenue Code. *Rogers*, 213 Ill. 2d at 137.

¶ 45 II. The Trial Court's Reduction of the Maintenance Award

¶ 46 Martha next contends that the trial court erred by (1) reducing Clyde's maintenance obligation when he was in indirect civil contempt for failing to provide healthcare and dental insurance for her, and (2) failing to consider Clyde's assets and income prior to reducing the maintenance award.

¶ 47 A. The Effect of Clyde's Indirect Civil Contempt

¶ 48 Martha first asserts that "[Clyde] should not be entitled to equitable relief of reductions of his maintenance payments when he was in indirect civil contempt of the court's judgment order regarding payment of [her] health insurance and dental insurance premiums." We note, however, that Martha fails to cite any relevant legal authority to support her position as to this issue. This court "is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review." *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999). Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) provides that an appellant's brief must contain an argument section that sets forth the appellant's contentions "and the reasons therefor, with citation of the authorities and the pages of the record relied on." "Both argument and citation to relevant authority are required." *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010). Thus, we find Martha's failure to cite relevant authority results in forfeiture of this argument pursuant to Rule 341(h)(7).

¶ 49 B. The Trial Court's Alleged Failure To Consider Clyde's Assets and Income

¶ 50 Martha next contends the trial court erred in reducing Clyde's maintenance obligation because it failed to consider liquid assets totaling $822,204.01 and his current wife's income.

¶ 51 The decision to modify maintenance lies within the sound discretion of the trial court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). On review, a court will not disturb a trial court's decision to modify maintenance absent a clear abuse of discretion. *Id*. at 38. A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113 (2004). "In addition, it is well established that the credibility of the witnesses and weight to be given to their testimony is for the trier of fact to decide, and a reviewing court may not substitute its judgment for that of the fact finder." *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011).

¶ 52 In general, a party seeking to modify or terminate a maintenance award must demonstrate a substantial change in circumstances. 750 ILCS 5/510(a-5) (West 2012). In determining whether modification or termination of a maintenance award is proper, the trial court considers the factors set forth in sections 504(a) and 510(a-5) of the Marriage Act. 750 ILCS 5/504(a), 510(a-5) (West 2012). In particular, section 504(a) provides that the trial court shall consider the following relevant factors in granting a maintenance award:

> "(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." 750 ILCS 5/504 (West 2012).

Section 510(a-5) states:

"(a–5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors:

(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

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

750 ILCS 5/510(a-5) (West 2012).

¶ 53 These factors need not be "given equal weight, so long as the balance struck by the court is reasonable under the circumstances." *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485 (1992).

¶ 54 Based on our review of the record, we find that the trial court did not abuse its discretion by reducing the maintenance award to $262. In making its determination, the court carefully considered the appropriate factors and all of the evidence before it, including the liquid assets with which Martha takes issue on appeal. Further, contrary to Martha's contention, the court considered Clyde's spouse's income as it pertained to his alleged living expenses and determined that Clyde had, in fact, overstated his monthly expenses for that reason. Despite having found Clyde had the ability to pay maintenance following his retirement, the court nonetheless found his maintenance obligation should be limited to Martha's monthly "lifestyle deficit." The record supports this finding.

¶ 55 The evidence shows that Martha's monthly net income increased from $100 per month at the time of the original award of maintenance to $5578 per month (not including maintenance) at the time of the June/July 2014 hearing. Martha was awarded 54% of the parties' estate at the time of the dissolution of the marriage, yet she has nothing to show for it, save two houses which are encumbranced by mortgages. In addition, the evidence shows she spends a substantial amount of time traveling to, and gambling at, various casinos. The trial court noted that in the three years prior to the hearing, Martha "had significant gross winnings" at the casinos she frequented and that her "choice of employing her time [gambling] without disclosing the actual profit (or loss) by credibly admissible evidence should not be rewarded." Further, the record shows Martha has taken no steps to become self-sufficient. Based on the evidence, we find the trial court did not abuse its discretion in reducing the award of maintenance.

¶ 56 We further reject Martha's contention that the trial court's order runs afoul of the holdings in *In re Marriage of Schrimpf*, 293 Ill. App. 3d 246 (1997), and *Anderson*, 409 Ill. App. 3d 191. According to Martha, *Schrimpf* and *Anderson* stand for the proposition that a

maintenance award should not be reduced or terminated where the evidence shows the payor spouse still has the means to pay the award despite his retirement. We disagree.

¶ 57 Initially, we note that the procedural posture in *Schrimpf* is different than in the case before us. In *Schrimpf*, the respondent husband appealed from the trial court's denial of a reduction or termination of maintenance. *Schrimpf*, 293 Ill. App. 3d at 251. Thus, on review, the Fifth District had to determine whether the trial court abused its discretion in denying a reduction or termination of maintenance. *Id*. As noted, an abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *Sawicki*, 346 Ill. App. 3d at 1113. In contrast, the trial court here granted a reduction in maintenance and Martha appealed, thus placing the burden on her to show that no reasonable person would conclude that a reduction in her maintenance award was proper.

¶ 58 Moreover, neither *Schrimpf* nor *Anderson* stands for the proposition expressed by Martha. The *Anderson* court reversed the trial court's order terminating the respondent wife's maintenance because the trial court relied upon improper factors to terminate maintenance, not simply because the husband continued to have the means to pay the award even after his retirement. *Anderson*, 409 Ill. App. 3d at 205. In fact, the appellate court directed that on remand, the trial court should "award maintenance to [the wife] if it finds she has insufficient income to sustain herself." *Id*. at 209. In other words, the *Anderson* court suggested that maintenance may not be proper if the evidence showed the wife could support herself without it. Similarly, in *Schrimpf*, the evidence indicated that the wife was unable to support herself without the maintenance award. In contrast, the record here shows that Martha has sufficient income to sustain herself with the help of the reduced monthly maintenance award.

¶ 59 III. Martha's Request for Fees and Costs

¶ 60 Lastly, Martha requests that this court remand and direct the trial court to award her attorney fees and costs in prosecuting this appeal pursuant to section 508(a)(3.1) of the Marriage Act (750 ILCS 5/508(a)(3.1) (West 2016)). The lack of success on any issue raised in this appeal dictates that we deny the request.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 63 Affirmed.