

NOTICE
Decision filed 03/29/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150504-U

NO. 5-15-0504

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
MARTIN FLETCHER,)	Jackson County.
)	
Petitioner and Counterrespondent-Appellant,)	
)	
and)	No. 14-D-109
)	
TINA FLETCHER,)	Honorable
)	W. Charles Grace,
Respondent and Counterpetitioner-Appellee.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not incorrectly interpret section 504 of the Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West Supp. 2015)) nor did it abuse its discretion in awarding maintenance to respondent.
- ¶ 2 Petitioner/counterrespondent (petitioner), Martin Fletcher, appeals from a final order entered in the circuit court of Jackson County in a dissolution of marriage action. As part of the final order, the trial court awarded maintenance to respondent/counterpetitioner (respondent), Tina Fletcher. In this appeal, petitioner argues: (1) the trial court incorrectly interpreted section 504 of the Illinois Marriage and

Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West Supp. 2015)) and (2) abused its discretion in awarding maintenance to respondent without deviating from the guidelines in section 504 of the Act under the particular facts of this case. We affirm.

¶ 3 BACKGROUND

¶ 4 The parties married on May 18, 1996. No children were born during the marriage. On July 21, 2014, petitioner, age 51, filed a petition for dissolution. Respondent, age 53, later filed a counterpetition for dissolution. Both parties' incomes are limited to disability payments.

¶ 5 Petitioner receives \$959 in Social Security disability benefits and \$2,720 in disability payments from the Illinois State Retirement System. Respondent receives \$728 in disability payments from Social Security. Respondent testified her car was repossessed in September 2015, after petitioner refused to assist her in making payments. She testified she does not have money to obtain reliable transportation.

¶ 6 Respondent lives in a home she inherited from her father. At the time she inherited the house, it was uninhabitable. Respondent secured a grant in the amount of \$23,000 to assist her in renovating the home. After renovations were completed, a realtor estimated the home's value at \$30,000.

¶ 7 In addition to the house, respondent received \$4,000 in life insurance benefits and \$35,000 from the sale of her father's property after her father's death. Part of the \$4,000 was used to pay respondent's father's funeral expenses. Respondent testified she returned the \$35,000 to the other heirs out of obligation because petitioner owed her father more than \$35,000. For example, respondent testified her father allowed petitioner to use his

Sears credit card, and petitioner charged \$10,000 on the card. Petitioner also sold three vehicles owned by respondent's father and removed a washing machine, two freezers, and guns from respondent's father's house and sold them for profit. Additionally, the parties lived with respondent's father and agreed to pay him \$600 per month to live there, but never paid him any money. Respondent estimated that when all these items were added up, it came to more than \$35,000, so she paid the \$35,000 to her sisters who were also heirs of her father's estate.

¶ 8 Petitioner's financial disclosure statement shows his monthly income is \$3,422.68. It also indicates he filed for Chapter 13 bankruptcy, and, as a result, makes monthly payments of \$719 to the bankruptcy trustee. In the bankruptcy case, petitioner swore to monthly income of \$3,679.07, and listed different living expenses than what he listed in his disclosure statement in the instant case. Petitioner testified he lives in a 27 foot by 8 foot travel trailer owned by his mother for which he pays her \$300 per month in rent, as well as an additional \$110 per month in lot rent.

¶ 9 On November 12, 2015, the trial court entered a judgment of dissolution which (1) incorporated a previous agreement between the parties regarding the distribution of property and debts, and (2) ordered maintenance. Pursuant to the parties' previous agreement, the parties were each awarded their respective nonmarital property, one-half of petitioner's pension from the state, and one-half of the proceeds from petitioner's pending personal injury lawsuits. Each party was awarded all bank accounts in his or her name and furniture and personal belongings in their possession. The parties were ordered to assume responsibility for their own debts, and petitioner was ordered to assume

responsibility and hold respondent harmless from his Chapter 13 bankruptcy debt, the IRS debt of the parties, and any other debts outstanding in his name and not dischargeable in his bankruptcy case. Petitioner was also ordered to pay respondent maintenance.

¶ 10 The trial court specifically awarded maintenance as follows:

"Due to income differential between the parties and the lifestyle of marriage, [respondent] shall be awarded maintenance in the amount of \$700.00 per month, beginning November 1st of each month, until [petitioner's] bankruptcy plan is finished. Thereafter, [petitioner] shall pay [respondent] \$958.00 per month maintenance, due on the 1st of each month, in maintenance for 15 years. Said maintenance shall be terminable and modifiable pursuant to statute."

Petitioner now appeals.

ANALYSIS

¶ 11 Because both arguments raised by petitioner on appeal directly relate to section 504 of the Act, we address them in tandem. Petitioner first contends the trial court incorrectly interpreted section 504 of the Act to mean that it did not have discretion to deviate from the "amount" and "time" factors listed in the statute. Petitioner also contends the trial court abused its discretion in awarding maintenance without deviating from the guidelines of section 504. Because the trial court did in fact deviate from the guidelines found in section 504 of the Act, both of petitioner's arguments fail.

¶ 12 "As a general rule, 'a trial court's determination as to the awarding of maintenance is presumed to be correct.' " *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650, 895

N.E.2d 1025, 1037 (2008) (quoting *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063, 838 N.E.2d 310, 314 (2005)). Consequently, the amount of a maintenance award lies within the sound discretion of the trial court, and it will not be reversed absent an abuse of discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010). The party seeking reversal of a maintenance award bears the burden of showing the trial court abused its discretion, which occurs only where "no reasonable person would take the view adopted by the trial court." *Id.*

¶ 13 Section 504(a) of the Act provides that, in a proceeding for dissolution of marriage, a trial court "may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just." 750 ILCS 5/504(a) (West Supp. 2015). Section 504 lists several factors a trial court should consider when determining a maintenance award, including, but not limited to, (1) the income and property of each party, including the marital property apportioned and nonmarital property assigned to the spouse seeking maintenance; (2) the needs of each party; (3) present and future earning capacity of each party; impairment of the realistic present or future earning capacity of the party against whom maintenance is sought; (4) the standard of living established during the marriage; (5) the duration of the marriage; (6) the age, health, occupation, amount and sources of income, employability, and liabilities of each of the parties; (7) the tax consequences of property division; (8) contributions and services by the party seeking maintenance to the education, training, or career potential of the other spouse; (9) any valid agreement between the parties; and (10) any other factor that a trial court finds just and equitable. 750 ILCS 5/504(a)(1)-(14) (West Supp. 2015). In awarding maintenance,

courts have wide latitude in considering which factors should be used in determining reasonable needs, and a trial court is not limited to the factors listed in the statute. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, 967 N.E.2d 358.

¶ 14 When determining an award of maintenance, the trial court must balance the ability of the spouse to support herself or himself in some approximation to the standard of living she or he enjoyed during the marriage, and no one factor is dispositive once it has been determined an award is appropriate. *Id.* Stated differently, "the benchmark for a determination [of maintenance] is the reasonable needs of a spouse in view of the standard of living established during the marriage as well as the duration of the marriage, the ability to become self-supporting, and the lack of an income-producing spouse." *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 620, 814 N.E.2d 152, 161 (2004).

¶ 15 If a court determines maintenance is appropriate under the facts of the case and the combined gross income of the parties is less than \$250,000, our General Assembly has provided the following guidelines:

"(1) Maintenance award in accordance with guidelines. In situations when the combined gross income of the parties is less than \$250,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.

(B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: 5 years or less (.20); more than 5 years but less than 10 years (.40); 10 years or more but less than 15 years (.60); or 15 years or more but less than 20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or maintenance for a period equal to the length of the marriage." 750 ILCS 5/504(b-1)(1) (A), (B) (West Supp. 2015).

Our General Assembly also allows for a deviation from the guidelines "after the court's consideration of all relevant factors set forth in subsection (a)" set forth above. 750 ILCS 5/504(b-1)(2) (West Supp. 2015).

¶ 16 If a court determines maintenance is warranted, then it should state its findings in the following manner:

"(b-2) Findings. In each case involving the issue of maintenance, the court shall make specific findings of fact, as follows:

(1) the court shall state its reasoning for awarding or not awarding maintenance and shall include references to each relevant factor set forth in subsection (a) of this Section; and

(2) if the court deviates from otherwise applicable guidelines under paragraph (1) of subsection (b-1), it shall state in its findings the amount of maintenance (if determinable) or duration that would have been required under the guidelines and the reasoning for any variance from the guidelines." 750 ILCS 5/504(b-2)(1), (2) (West Supp. 2015).

After considering the factors listed in the statute, the statute as a whole, and the circumstances of this case, we cannot say the trial court incorrectly interpreted the statute so that it committed reversible error nor can we say the award of maintenance was an abuse of discretion.

¶ 17 Petitioner's attorney freely admitted on the record that respondent was entitled to maintenance, specifically stating, "I think we owe her some maintenance. I said that and I don't disavow that statement." As to the amount of maintenance, the trial court heard from both parties regarding their needs, their disabilities, the standard of living established during the marriage, their respective incomes, petitioner's pending lawsuits, and his current bankruptcy payments. The trial court specifically asked petitioner's attorney, "Of the specific factors under the maintenance provision, are there any other factors you can point to that should reduce the amount of maintenance?" Petitioner's attorney replied, "No. Other than living conditions." Petitioner's attorney had previously

argued that because petitioner lived in a camper while respondent resided in a house this should reduce the award of maintenance.

¶ 18 The trial court explained its award of maintenance as follows:

"Quite frankly, it is a matter of plugging in under the statute, and the Court still has to make a finding that an award of maintenance is appropriate by using the same factors that have existed pursuant to the statute.

I'm making the finding that because of the income differential and because of the style of life during the course of the marriage, that [respondent] ought to receive an award of maintenance. And, when looking at the new statute, I don't believe that I have any ability to do anything with the exception of being reasonable about what the circumstances actual[ly] are."

After plugging in the calculations found in section 504, the trial court determined petitioner should pay respondent \$958 per month for a period of 15 years; however, because of petitioner's bankruptcy payments, the trial court lowered the award of maintenance to \$700 per month until petitioner completes his bankruptcy plan.

¶ 19 The trial court specifically stated on the record that it could deviate from the statute if reasonable circumstances were presented. However, because petitioner failed to present any evidence which would allow the trial court to deviate from the statutory formula other than petitioner's bankruptcy, the trial court made only a limited deviation. The trial court deviated from the guidelines by awarding only \$700 in maintenance to respondent for the "first year plus two months or thereabouts." Thereafter, the trial court raised the maintenance award to \$958 for the remaining time.

¶ 20 Both parties are disabled and rely on disability payments to sustain them. There appears to be no chance that either of them will work again. But if their incomes should change, the trial court made it clear that either party could seek a modification. The trial court heard substantial testimony from both parties. It considered the arguments of counsel, weighed the factors found in section 504(a) of the Act, and correctly computed the amount and duration of maintenance pursuant to the guidelines found in section 504 of the Act to be utilized when the combined income of the parties is less than \$250,000. We agree with respondent that if the trial court truly believed it had no discretion, it would not have deviated from the guidelines.

¶ 21 CONCLUSION

¶ 22 The trial court's award of maintenance in two different amounts shows it used discretion in awarding maintenance. Under the facts and circumstances of this case, we cannot say that no reasonable person would have awarded maintenance in the amount and for the length of time the trial court did. Accordingly, petitioner has failed to convince us that the trial court incorrectly interpreted section 504 of the Act or that it abused its discretion in awarding maintenance in the amount, time, or manner in which it did.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Jackson County.

¶ 24 Affirmed.