

NOTICE
Decision filed 08/01/17. 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) 160080-U

NO. 5-16-0080

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
MICHELLE E. COZADD,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 15-D-193
)	
EVAN H. COZADD,)	Honorable
)	Julia R. Gomric,
Respondent-Appellant.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The trial court's judgment of dissolution of marriage order is vacated and remanded with directions for the court to enter into the record specific findings regarding its maintenance determination.

¶ 2 **FACTS**

¶ 3 This appeal arises from a dissolution of marriage proceeding. The facts necessary for the disposition of this case are as follows.

¶ 4 Petitioner, Michelle E. Cozadd, and respondent, Evan H. Cozadd, were married on November 8, 2003. At the time of the marriage, petitioner was 35 years old and

employed by the Illinois Environmental Protection Agency. Respondent was 38 years old and worked for the Air National Guard as a civilian federal technician and reservist. No children were born as a result of the marriage, and petitioner does not have any other children or dependents. Respondent is the father of two children: Claire L. Cozadd born on April 28, 1997, and Claudia K. Cozadd born on July 26, 2000. The parties lived with respondent's two daughters throughout the marriage, and jointly purchased a house in O'Fallon, Illinois, in 2009.

¶ 5 The parties separated in January 2015, at which time petitioner moved out of the marital home and into a duplex. Respondent continued to live at the marital residence with his two daughters after petitioner moved out. Petitioner filed a petition for dissolution of marriage on March 9, 2015, and a trial was held on November 12, 2015.

¶ 6 At trial, the court heard testimony from the parties regarding their income, expenses, debts, retirement accounts, and pensions. Concerning income, petitioner testified her annual salary was \$80,172. There was conflicting testimony regarding respondent's annual salary. Respondent testified he made a calculation mistake when he filled out his financial affidavit, including disclosing that he earned bonuses which he did not actually receive. During closing argument, petitioner's counsel asserted respondent's gross annual income totaled \$182,000 after including child support. Respondent's counsel asserted that according to respondent's W-2 forms and pay stub, his gross annual income totaled approximately \$112,000. Also at trial, petitioner requested maintenance in the amount of \$2000 per month so she could live a "comparable lifestyle," and further requested that respondent contribute to one half of her attorney fees.

¶ 7 The trial court entered a judgment of dissolution of marriage on the same day trial was held and ordered as follows:

- "(1) Grounds of irreconcilable differences are proven and the parties are awarded a judgment of dissolution;
- (2) After application of factors and maintenance guidelines, respondent is awarded her requested \$2,000 per month, a downward deviation, by consent. Maintenance to be paid on the first day of each month hereafter for 24 months;
- (3) Each party is to receive one half of the marital portion of all retirement accounts, benefits held by either party. The parties are to exchange documents necessary to establish the exact amount of the marital portion of each account/benefit;
- (4) The retirement accounts/benefits are:
Petitioner: IMRF, deferred compensation
Respondent: annuity, TSP, military pension;
- (5) Respondent is awarded the following personal property: MG Midget, Kawasaki motorcycle, Bonneville, his checking and savings accounts;
- (6) Petitioner is awarded the following personal property: all of the master bedroom furnishings, including lamps and rugs, Honda motorcycle, F150 truck, and camper (petitioner to pay balance due on storage);
- (7) Respondent is awarded the marital home and all debt associated with the home. Respondent shall refinance the home within 90 days of this judgment and remove petitioner's name from the debt;

(8) Each party is responsible for his or her own debts except as otherwise specifically stated herein;

(9) Respondent shall pay one half of the balance of petitioner's attorney fees."

¶ 8 Respondent filed a motion to reconsider on December 10, 2015. A hearing on respondent's motion was held on January 26, 2016, where respondent's counsel requested that the court review respondent's 2015 W-2 forms and a petition to abate child support filed by respondent's former wife after trial. Respondent's counsel asserted this information was not available at the time of trial. After hearing argument from both parties, the trial court denied respondent's motion to reconsider.

¶ 9 This appeal followed.

¶ 10 ANALYSIS

¶ 11 Respondent first contends the trial court erred when it failed to make specific findings regarding respondent's income, failed to identify reasoning for awarding maintenance with citation to relevant statutory factors, and failed to calculate the amount and duration of maintenance under the guidelines.

¶ 12 Generally, the trial court's determination regarding an award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). The trial court is afforded discretion to determine the propriety, amount, and duration of a maintenance award, and a reviewing court will not reverse the trial court's maintenance determination absent an abuse of discretion. *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790 (2003). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view

adopted by the trial court. *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 80. Under the abuse of discretion standard, the question is not whether this court may have decided the issue differently, but whether any reasonable person could have taken the position adopted by the trial court. *Shen*, 2015 IL App (1st) 130733, ¶ 80. The spouse seeking reversal of a maintenance award bears the burden of showing the trial court abused its discretion. *Nord*, 402 Ill. App. 3d at 292.

¶ 13 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) sets forth factors the court must consider when determining the amount and duration of maintenance awards. These factors include: (1) the income and property of each party; (2) the needs of each party; (3) the realistic present and future earning capacity of each party; (4) any impairment of earning capacity due to devoting time to domestic duties or having forgone or delayed opportunities due to the marriage; (5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought; (6) 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 any parental responsibility arrangements and its effect on the party seeking employment; (7) the standard of living established during the marriage; (8) the duration of the marriage; (9) the age and physical and emotional condition of the parties; (10) all sources of public and private income; (11) the tax consequences of the property division; (12) contributions and services by the party seeking maintenance to the education, training, or career potential, or license of the other spouse; (13) any valid agreement of the parties; and (14) any other factor the court

expressly finds to be just and equitable. 750 ILCS 5/504(a) (West 2012). The trial court is not limited to the factors listed under section 504(a) of the Act when awarding maintenance, and is afforded wide latitude in considering what factors should be used in determining reasonable needs. *In re Marriage of Dea*, 2013 IL App (1st) 122213, ¶ 18.

¶ 14 Prior to the enactment of new maintenance guidelines under the Act (eff. Jan. 1, 2015), the trial court was not required to make specific findings regarding its maintenance determination, and was only required to consider all relevant statutory factors. *Nord*, 402 Ill. App. 3d at 293. As the Second District appellate court explained in *In re Marriage of Connors*:

"Although a trial court should make specific findings or otherwise make clear from the record the relevant factors it considered in rendering a decision under the Marriage Act, such findings are not mandatory. [Citation.] Reviewing courts have consistently held that, where the record is adequate to provide a basis upon which to review the propriety of the decision and the decision is supported by the evidence, the reviewing court will not reverse solely because specific findings are lacking." *In re Marriage of Connors*, 303 Ill. App. 3d 219, 230 (1999).

¶ 15 Effective January 1, 2015, however, if a court determines maintenance is warranted, it is required to state its findings as follows:

"(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 2014).

¶ 16 The primary rule of statutory interpretation is to ascertain and give effect to the intent of the legislature, which is best evidenced by the clear and unambiguous language of the statute. *People v. Ward*, 326 Ill. App. 3d 897, 902 (2002). Our supreme court has stated that courts should first look to the language of the statute to determine the intent of the drafters. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 173 (1998). Where the statutory language is clear, no resort is necessary to other aids of construction. *Mitchell*, 181 Ill. 2d at 173. Further, "[u]nder the rules for statutory construction, the word 'shall' ordinarily connotes a mandatory obligation, unless the context of the statute indicates otherwise." *In re Marriage of Takata*, 304 Ill. App. 3d 85, 95 (1999).

¶ 17 Here, section 504(b-2) provides "the court *shall* make specific findings of fact" regarding its reasoning for awarding or not awarding maintenance or its reasoning for any deviation from the guidelines in its award of maintenance. (Emphasis added.) 750 ILCS 5/504(b-2)(1), (2) (West 2014). In the above context, we find no other interpretation but that the use of the word "shall" creates a mandatory obligation. *Takata*, 304 Ill. App. 3d

at 95. The plain and ordinary meaning of section 504(b-2) requires the court to make specific findings of fact regarding its maintenance determination. 750 ILCS 5/504(b-2)(1), (2) (West 2014).

¶ 18 In this case, the record shows that both in its oral ruling from the bench and in its written order, (1) the trial court failed to state specific findings regarding its reasoning for awarding maintenance with reference to relevant factors provided in section 504(a) of the Act, and (2) failed to state specific findings regarding its downward deviation of maintenance (\$2000 per month for 24 months) and the amount of maintenance or duration that would have been required under the guidelines. 750 ILCS 5/504(b-2)(1), (2) (West 2014). This omission constitutes reversible error, as it directly contravenes the maintenance guidelines. Accordingly, we vacate the trial court's judgment of dissolution of marriage and remand this cause with directions for the court to enter into the record specific findings regarding its maintenance determination in accordance with section 504(b-2) of the Act. 750 ILCS 5/504(b-2)(1), (2) (West 2014).

¶ 19 Respondent raises several more assertions on appeal, including that (1) the trial court erred in awarding rehabilitative maintenance because there was insufficient evidence to establish petitioner's need for maintenance and respondent's ability to pay maintenance; (2) the trial court's refusal to allow evidence of respondent's future earning capacity, 2015 earnings, and abatement of child support prejudiced respondent; (3) the court's distribution of marital property was arbitrary, ignored recognized principles of law, and resulted in an inequitable distribution; and (4) the trial court erred in ordering

respondent to contribute to petitioner's attorney fees. Due to our disposition of this case, we need not address these remaining arguments on appeal.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we vacate the judgment of the circuit court of St. Clair County and remand this cause with directions for the court to enter into the record specific findings regarding its maintenance determination in accordance with section 504(b-2) of the Act. 750 ILCS 5/504(b-2)(1), (2) (West 2014).

¶ 22 Vacated and remanded with directions.