

2018 IL App (1st) 171422-U

No. 1-17-1422

Order filed May 11, 2018

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF STEPHEN JARRET RAAB,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
and)	No. 14 D 4476
)	
JULIE MICHELLE RAAB,)	Honorable
)	Elizabeth Loreda Rivera,
Respondent-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by denying the wife's request for maintenance because the court's finding—that the evidence did not show the wife had insufficient resources and opportunities for employment to support herself as the custodial parent—was not against the manifest weight of the evidence.

¶ 2 Respondent Julie Raab appeals the trial court's order that denied her request for maintenance. She argues that the trial court failed to consider all the factors in favor of a maintenance award and she would have to liquidate the minimal assets awarded to her to

maintain the standard of living she and her children had before the divorce. She also argues that the trial court improperly denied maintenance based on its findings that she engaged in improper conduct in the divorce proceedings and made only a minimal effort to seek employment. Finally, she contends that the trial court should have reserved the issue of maintenance if petitioner Jarret Raab's physical ailments impaired his future earning capacity and ability to pay maintenance.

¶ 3 For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Julie and Jarret Raab were married in June 2005 and have two minor children. In 2014, Jarret filed a petition for dissolution of marriage and moved out of the marital residence. Julie and the children continued living in the marital residence.

¶ 6 In 2016, the children were about eight and four years old. Julie was about 41 years old and in good health. She was unemployed but had a master's degree in education and had worked as a teacher for about nine years.

¶ 7 Jarret was about 43 years old and an attorney. He had joined his current law firm in 2007 as an associate and became a partner in 2012. As a partner, he received monthly draws of \$13,000 plus quarterly distributions to be used towards his self-employment obligations. His net income in 2015 was \$219,460. In January 2016, his firm had financial difficulties so he received a much lower income and stopped receiving quarterly distributions. In June 2016, he no longer received a monthly draw and was paid on an hourly basis as a contract attorney. He grossed \$5,300 in June 2016 and \$7,600 in July 2016. He immediately began to seek new employment in January 2016 and recorded his job search in a lengthy diary. He searched primarily for legal jobs but also searched for sales and insurance jobs.

¶ 8 In 2016, Jarret began suffering from a rare and debilitating skin disease that caused severe skin inflammation and had a significant negative impact on his health. He suffered from extreme discomfort, blurred vision, excessive skin peeling, and significant swelling of his face, hands, feet, and body. The illness affected his ability to sit and hindered his ability to type. He had undergone three or four topical steroid treatments that were not successful. If his current treatment was unsuccessful, another treatment involving two monthly injections would cost between \$4,000 and \$6,000 per injection without insurance. Jarret would not be able to afford that treatment without insurance and did not know how much longer his firm would gratuitously continue to pay for his family's coverage.

¶ 9 From January to June of 2015, Jarret voluntarily paid Julie \$8,400 each month in support, plus \$17,550 of the \$24,000 bonus he received in January and February of 2015. Then, from July 2015 to May 2016, Jarret paid Julie about \$88,000 in support. Meanwhile, Julie withdrew \$31,500 from the parties' joint HELOC account without Jarret's consent. Between October 2015 and March 2016, she drained a \$61,000 personal injury award down to about \$1,500. From February to May of 2016, she depleted about \$85,000 of marital money.

¶ 10 In March 2016, the trial court granted Jarret's motion to list the marital residence for sale. Based on the recommendation of the realtor, who was selected by Julie, Jarret repaired the basement floor at the cost of about \$1,000. Also in March, the court ordered both parties to maintain a job diary, with 10 submissions per week. Julie, however, did not begin her job search until May 2016 and applied for about one teaching position per week for 1 1/2 months. She did not apply for a job in July or August of 2016. According to Julie, she knew that she would not be hired because she needed to get "recertified." However, she did not produce any definitive

evidence regarding any recertification process, including its cost and time frame, and did not begin the recertification process.

¶ 11 In July 2016, the court issued an order for rule to show cause regarding Julie's failure to list the marital residence for sale. At the hearing on the rule to show cause, Julie admitted that she did not take any affirmative steps to list the residence for sale and instead had tried to do everything she could to remain in the residence. She also failed to pay the HELOC and mortgage since May 2016, in violation of a June 2015 court order.

¶ 12 Before this matter proceeded to trial, Julie and Jarret agreed to joint custody of their children and that Julie would be the custodial parent. In August 2016, this matter went to trial on the issues of distribution of assets, maintenance, and child support. The trial was held over a period of three days.

¶ 13 On October 17, 2016, the trial court issued a 31 page judgment for dissolution of marriage, which gave a detailed account of the parties' conduct during the proceedings and the evidence presented at trial. The court considered the relevant factors concerning the distribution of marital property, including the parties' relatively young age, post-graduate education, and future employability. The court also weighed Jarret's significant contribution to the acquisition of the marital property against Julie's substantial depletion of the marital estate and blatant disregard for the estate's preservation. The court awarded Julie 60% of the net proceeds from the marital residence, which had a suggested sale price of \$699,000 and was encumbered by debts totaling \$455,874. Also, Julie received 60% (\$133,305) of the marital portion of Jarret's 401(k), 60% (\$3,600) of the marital portion of her IRA and all of the non-marital portion (\$31,600), \$17,750 of her investment account, 100% of the remaining funds from her personal injury

settlement (\$1,500), the 2011 Buick (marital vehicle with \$14,337 of equity), and 100% of her bank accounts (\$4,200).

¶ 14 Concerning Julie's request for maintenance, the trial court stated that it had carefully reviewed and considered each statutory factor and the relevant case law and decided that an award of maintenance would not be appropriate. The court also noted that it had carefully weighed the consequences of denying Julie maintenance when the court decided to award her a substantially larger portion of the property division. Furthermore, Julie had failed to provide a disclosure statement demonstrating her need for a maintenance award, wavered considerably when discussing the amount of money she thought she would need to sustain her lifestyle, presented almost no evidence regarding the standard of living established during the marriage, and failed to demonstrate an inability to support herself through appropriate employment.

¶ 15 Furthermore, the court ordered Jarret to pay child support totaling 28% of his net monthly income and a "far greater" share of the children's ongoing expenses, including health insurance, medical care, education, and extracurricular activities.

¶ 16 On November 14, 2016, Julie retained appellate counsel, who filed Julie's initial notice of appeal that same day. This court eventually dismissed this initial appeal in April 2017 for want of prosecution for failure to file the record in a timely fashion.

¶ 17 Meanwhile, on November 15, 2016, Julie's trial counsel filed a posttrial motion to reconsider the judgment.

¶ 18 On March 8, 2017, the trial court denied the motion to reconsider. The court rejected Julie's assertion that she was denied maintenance based on her lack of effort to become employed. Also, the court found that Julie's motion to reconsider mischaracterized much of the

critical trial testimony and fabricated new evidence. Accordingly, the court found that sanctions against Julie and her trial counsel were warranted and granted Jarret leave to file a petition for expenses pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). The court also set the matter for a hearing to determine a specific child support amount.

¶ 19 On March 31, 2017, the trial court issued the order that set the specific amount of Jarret's twice-monthly child support payments.

¶ 20 On June 8, 2017, the parties entered an agreed order that assessed \$4,000 in attorney fees against Julie and her trial counsel.

¶ 21 On June 12, 2017, Julie's appellate counsel filed another notice of appeal.

¶ 22 II. ANALYSIS

¶ 23 A. Jurisdiction

¶ 24 Before we address the merits of the arguments on appeal, we first address Jarret's June 30, 2017 motion to dismiss Julie's appeal for lack of jurisdiction.

¶ 25 First, Jarret argues that this appeal, which is based on Julie's second notice of appeal that was filed on June 12, 2017, is barred under the law of the case doctrine because Julie is attempting to re-litigate the same issues that were conclusively resolved in Jarret's favor when this court, in April 2017, dismissed for want of prosecution the appeal that was based on Julie's initial notice of appeal, which was filed on November 15, 2016. Jarret asserts that jurisdiction was immediately conferred on this court when Julie's premature November 2016 notice of appeal became effective on March 8, 2017, *i.e.*, the date that the trial court denied her motion for reconsideration.

¶ 26 Jarret’s argument lacks merit because the November 2016 notice of appeal was premature and did not vest this court with jurisdiction to consider the appeal where one day later Julie filed a timely postjudgment motion for reconsideration. When a party files a timely postjudgment motion, “a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered.” Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). However, in the instant case, Julie’s premature November 2016 notice of appeal did not become effective when the trial court denied her postjudgment motion for reconsideration on March 8, 2017, because the court also ruled that it would impose an appropriate sanction against Julie and her trial attorney for violating Rule 137 and granted Jarret leave to file a petition for reasonable expenses. Consequently, the March 8, 2017 order was still not appealable because a Rule 137 claim remained pending. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (“A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a) [that there is no just reason to delay enforcement or appeal].”); see also *John G. Philips v. Brown*, 197 Ill. 2d 337, 341-42 (2001) (requests for sanctions under Rule 137 are claims within the underlying action and, consistent with the policy against piecemeal appeals, absent a Rule 304(a) finding, a matter is not final and appealable until the trial court has disposed of all requests for sanctions under Rule 137). The trial court made no Rule 304(a) finding here, so appellate jurisdiction was not conferred on this court when the trial court denied Julie’s motion to reconsider.

¶ 27 Second, Jarret argues that this court lacks jurisdiction of this appeal with respect to the trial court’s March 31, 2017 postjudgment order, which set the specific amount of his child

support payments. Jarret contends that Julie had 30 days to appeal that postjudgment order and her untimely June 12, 2017 notice of appeal was filed about 73 days after the postjudgment order was issued.

¶ 28 Jarret's argument lacks merit. The March 31, 2017 postjudgment order also set a status date for a ruling on the Rule 137 sanctions. Because the Rule 137 sanctions claim was still pending, that March 31, 2017 child support modification order was not ripe for appeal, pursuant to Rule 303(a)(1).

¶ 29 Finally, Jarret argues that Julie's challenge to the trial court's June 8, 2017 order imposing Rule 137 sanctions also fails on jurisdictional grounds because that order was entered by agreement of the parties and is not subject to appellate review.

¶ 30 Jarret's argument misses the mark concerning the claims of Julie's appeal. Julie does not challenge the amount of sanctions she agreed to in that order. The agreed order entered on June 8, 2017 finally disposed of the Rule 137 sanctions claim. Until the agreed order was entered, no appeal from the underlying matters was proper. The issuance of the sanctions order made all of the previously entered orders final and appealable.

¶ 31 We conclude that we have jurisdiction over the instant appeal. Accordingly, we deny Jarret's motion to dismiss this appeal for lack of jurisdiction.

¶ 32 **B. Sufficiency of the Record on Appeal**

¶ 33 Next, we address Jarret's argument that this court should affirm the trial court's judgment because Julie has not included in the record on appeal the parties' trial stipulations and a transcript of the hearing, a bystander's report, or the parties' agreed statement of facts. Jarret argues that, as a result of this incomplete record on appeal, there is nothing in the record from

which this court could determine that the trial court abused its discretion by denying maintenance to Julie.

¶ 34 When the record on appeal lacks either a transcript or a bystander's report of the trial, we will resolve any factual issues by presuming that the trial court's rulings were in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). As the appellant, Julie has the burden to provide a sufficiently complete record so that this court has an adequate basis for reviewing the decision below. See *id.*; *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005). If any doubts arise due to the absence of a complete record on appeal, we will resolve those doubts against the appellant and in favor of the validity of the trial court's rulings. *Foutch*, 99 Ill. 2d at 392.

¶ 35 C. Denial of Maintenance

¶ 36 On appeal, Julie challenges the trial court's decision that denied her request for maintenance. She argues that the trial court failed to consider all the factors in favor of a maintenance award and there was sufficient evidence of her needs and the very comfortable upper middle class lifestyle enjoyed by the parties to warrant a maintenance award. Specifically, Julie refers to the evidence about the parties' home in an upper middle class suburb, Jarret's 2015 net income, the parties' automobiles, their term life insurance policies, the amount of money in their bank accounts and retirement accounts, their credit card debts, and the court orders that had granted Julie temporary support. Julie asserts that she will have to liquidate the minimal assets the trial court awarded her to maintain some semblance of the standard of living she and her children had before the divorce. She also argues that the trial court clearly acted improperly when it denied her maintenance to punish her purportedly objectionable conduct

during the divorce proceedings and her minimal effort to seek employment. In addition, Julie contends that if the trial court believed it was unable to determine the maintenance issue at the time of the trial due to Jarret's health problems, impaired future earning capacity, uncertain work situation, and decreasing income, then the court should have reserved the issue of maintenance for a later consideration of the parties' respective financial situations.

¶ 37 This appeal involves the determination of Julie's entitlement to maintenance, which is a matter that lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37. An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Dwan*, 108 Ill. App. 3d 808, 812 (1982). We also acknowledge in cases where credibility is at issue that the "trial court is in the best position to review the evidence and to weigh the credibility of the witnesses." *In re Marriage of Bates*, 212 Ill. 2d 489, 515-16 (2004). Accordingly, the circuit court's findings of fact are reviewed under the manifest weight of the evidence standard. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342 (1996). "A finding of fact is against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent or the fact finder's finding is palpably erroneous and wholly unwarranted." *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997).

¶ 38 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2016)) provides that "the court may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital

misconduct.” The relevant factors the court should consider to determine whether a maintenance award is appropriate include:

“(1) the income and property of each party, including the marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;

(2) the needs of each party;

(3) the realistic 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) 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, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

(11) the tax consequences of the property division upon the respective economic circumstances of the parties;

(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a)(1) to (a)(14) (West 2016).

¶ 39 No one factor is determinative in the decision to award maintenance, and the trial court is not required to give equal weight to each factor as long as the court’s balancing of the factors is reasonable. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 84. “The court fashions an award of maintenance on the basis of the circumstances disclosed by the evidence at the time of the hearing.” *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 791 (2003). The court may award a spouse maintenance if she is without sufficient property to provide for herself, is unable to support herself through appropriate employment, or is otherwise without sufficient income. *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967, 972 (1982). A “major consideration in awarding maintenance is the necessity to obviate marriage-conditioned needs and to enable a formerly dependent spouse to acquire financial independence for the future.” *In re Marriage of Mayhall*,

311 Ill. App. 3d 765, 768 (2000). The spouse requesting maintenance has an affirmative duty to seek and accept appropriate employment. *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 970 (1992). A spouse who has the means of earning more income may not use self-imposed poverty as a basis for claiming maintenance. *Id.*

¶ 40 In the present case, the trial court found that Julie was excessively and irresponsibly litigious in this case, was irresponsible with her spending, failed to give the court clear and complete information about her financial situation, gave inconsistent and unreliable testimony about the amount of money she thought she would need to sustain her lifestyle, and gave the court almost no information about the standard of living established during the marriage. The trial court ruled that the evidence was woefully insufficient for the court to determine that a maintenance award to Julie was appropriate.

¶ 41 The record establishes that the trial court did not deny Julie an award of maintenance as a form of punishment. The trial court expressly refuted Julie's assertion that she was denied maintenance based on her improper actions during the divorce proceedings, failure to comply with the court's order to maintain a job diary, or feeble effort to become employed. In determining that a maintenance award was not appropriate, the trial court explained that it had carefully weighed the consequences of denying Julie maintenance when the court decided to award her a substantially larger portion of the property division. Moreover, Jarret, in addition to paying child support, would pay a significant majority of the children's expenses and would have more financial obligations than Julie.

¶ 42 The court also noted that, prior to its property division award, Julie already had received at least \$155,950 in support and did not pay any tax on that amount. In addition, she obtained a

great financial advantage when she failed to pay the HELOC and mortgage since May 2016 and unilaterally decimated, without regard for the financial well-being of the children or Jarret, the marital estate, all of which caused Jarret to amass significant debt. Moreover, Jarret had paid Julie support since January 2015 and the amount of that support exceeded the requirement under the applicable guideline.

¶ 43 The parties did have disparate earning capacities. Although Julie had worked as a teacher when they were married, she later stopped teaching and raised their children while Jarret pursued a career as an attorney. The court noted that Julie made contributions to the marriage by being a homemaker and caretaker of the parties' children. Both children, however, would be in school full-time by the fall of 2017. The trial court found that Julie, who was healthy and relatively young, had the ability to become self-supporting but made little effort to use her master's degree in education and prior nine years of teaching experience to obtain any employment. Although Julie asserted that she did not have a current teaching license, she did not show that she sought similar positions that did not require a license. Furthermore, even though Jarret had complied with the court's order to pay Julie \$200 each month to reimburse her for any childcare costs she incurred while she obtained her recertification or sought employment, Julie failed to take any necessary steps to become recertified. She also failed to present clear evidence about the cost and time necessary to enable her to acquire the appropriate education, training, or certification to support herself through appropriate employment.

¶ 44 A decrease in the standard of living of both parties can be expected to some degree because it is more expensive to maintain two homes rather than one. Nevertheless, there was little evidence to show that Julie or the children would suffer a significant diminishment of their lifestyle because Julie failed to provide the court with a current financial disclosure statement.

Consequently, there was no credible basis to assume that Julie and the children would not be able to maintain their established standard of living.

¶ 45 Although Jarret's past earnings were substantial, the evidence established that his income had decreased significantly during the parties' separation and his future earning potential was uncertain due to his firm's financial difficulties and his illness. The trial court found that Jarret made a conscientious effort to find comparable employment, and we reject Julie's contention that the trial court's proper consideration of the effect of Jarret's health problem on his current and future ability to work somehow indicated that the trial court believed it could not determine the maintenance issue at the time of the trial.

¶ 46 Under the abuse of discretion standard, the question is not whether this court might have decided the issue differently, but whether any reasonable person could have taken the position adopted by the trial court. Here, the record shows that the trial court gave due consideration to all the relevant factors in its determination to deny Julie a maintenance award.

¶ 47 The trial court's decision was supported by the evidence and was fair and reasonable under the circumstances of this case. We conclude that the denial of maintenance to Julie was not an abuse of the trial court's discretion.

¶ 48 III. CONCLUSION

¶ 49 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 50 Affirmed.