2018 IL App (1st) 172915
No. 1-17-2915
Order filed December 18, 2018
Second Division

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF CALLAGHAN,	)	Appeal from the Circuit Court of Cook County.
(JOHN CALLAGHAN,	)	
Petitioner-Appellant,	)	No. 16 D 1291
and	)	
MARY CALLAGHAN,	)	The Honorable Jeanne R. Cleveland-Bernstein, Judge, presiding.
Respondent-Appellee).	)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Reservation of issue of maintenance was not an abuse of discretion.

¶ 2 After a 31-year marriage, John and Mary Callaghan divorced. The trial court allocated all real and personal property, bank accounts, investment and retirement funds, and life insurance. After finding that Mary's ill health might result in an inability to support herself, the trial court reserved the issue of maintenance indefinitely. John contests this reservation. We affirm, finding no abuse of discretion.

¶ 3 Background

¶ 4 The record on appeal consists of a bystander's report and a transcript of a hearing in which counsel for both parties and the trial judge discussed the proposed bystander's report, which ultimately was certified. Before trial, the parties stipulated to the pertinent facts.

¶ 5 Mary and John were married in 1986, and had two children, now adults. At the time of the divorce, Mary was 58 years old with a high school degree. Mary had worked at an insurance agency for 18 years, earning $67,000 in 2016.

¶ 6 John, a retired Chicago police officer, was 57 years old. John received a gross pension income of $6,488 per month from his 30-year employment. John's pension benefits would terminate at his death, and should he predecease Mary, her receipt of his pension benefits would also terminate. John's no-cost medical insurance through the Chicago Police Department would continue during his lifetime. Mary was entitled to free medical insurance as long as they remained married. John worked as a security guard, earning $36,378 gross in 2015, and $27,590 gross in 2016.

¶ 7 John had a Chicago police department 457(b) deferred compensation plan with a value of $260,062.98 as of 6/30/16. John also received $36,000 "comp time" payments; he rolled $19,650 into his 457(b) plan. The value of John's police pension was $1,353,475.

¶ 8 At trial, Mary testified that she had Parkinson's disease, high blood pressure, and anxiety. Mary had seen six or seven doctors before seeing a neurologist with the Rush Hospital Group. After 18 months of tests, she was diagnosed with Parkinson's in 2012.

¶ 9 In the judgment of dissolution, the trial court found Mary was "currently able to work, but, may lose her ability to work at any time." The court further found John and Mary were

"currently self-supporting, however as Mary's Parkinson's progresses she will be unable to work."

¶ 10 The trial court divided John's pension current and future payments equally between Mary and John, 50-50. The trial court awarded $191,930.17 from John's 457(b) deferred compensation plan to Mary (about 74%) and the balance to John. The trial court explicitly stated the "disproportional" amount of Mary's share offset the difference between John's no-cost health insurance coverage and Mary's substantial cost of securing health insurance coverage for herself, as well as her future medical expenses.

¶ 11 The trial court determined John's testimony and demeanor not credible and Mary's testimony credible.

¶ 12 The trial court order reserved the issue of maintenance from John to Mary.

¶ 13 Standard of Review

¶ 14 We review a trial court's order for an abuse of discretion. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 168 (2005). An abuse of discretion occurs "only where no reasonable [person] would take the view adopted by the trial court." *In re Marriage of Asch*, 100 Ill. App. 3d 293, 296 (1981).

¶ 15 Analysis

¶ 16 John contends that the trial court erred by reserving the issue of maintenance indefinitely. John argues that Mary received a disproportionate share of marital assets to maintain herself, and, therefore, is not entitled to maintenance. According to John, the trial court found Mary was self-supporting and not in need of maintenance, citing the trial court's order which read "John and Mary are currently self-supporting, however as Mary's Parkinson's progresses she will be

unable to work." Mary contends the court has the authority to indefinitely reserve the issue of maintenance.

¶ 17 The reservation of maintenance has statutory authority. Specifically, section 401(b) states: "Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, *reserved* or made provision for *** the maintenance of either spouse and the disposition of property. The court shall enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist." (Emphasis added.) 750 ILCS 5/401(b) (West 2016).

¶ 18 Reservation of maintenance, while not the norm, has been repeatedly approved in dissolution proceedings. "Regardless of whether the court grants or denies maintenance it may consider taking a reserved jurisdiction approach to maintenance." *In re Marriage of Shafer* 122 Ill. App. 3d 991, 999 (1984). Reserving jurisdiction provides trial court with another opportunity to review the award. *Id*. See *In re Marriage of Cohn*, 93 Ill. 2d 190, 199 (1982) (nonexhaustive list of appropriate circumstance included where party unable to pay maintenance if ordered); *In re Marriage of Smith*, 132 Ill. App. 3d 694, 701 (1985) (reservation of maintenance not an abuse of discretion where wife was employed and husband paid high percentage of his income in child support and would be unable to meet his own needs if obliged to pay maintenance).

¶ 19 The typical fact situation involves the trial court awarding an amount for maintenance and setting a time frame to review the need for an increase, decrease, or discontinuing maintenance payments altogether. To award maintenance indefinitely amounts to a disincentive for the receiving spouse to seek further education or employment or both. See *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 397 (1990) ("Not only does the five-year reservation of

maintenance protract the litigation, but it does not get [the wife] moving in the right direction, *i.e.*, towards a position of self-sufficiency."). The question before us concerns neither the ability to pay maintenance nor the procurement of suitable employment so as to justify a future reduction in the payments. Rather, because of Mary's obvious health issues, the trial court allowed for future adjustments dependent on the worsening of a known health condition.

¶ 20 Awards of rehabilitative maintenance with automatic termination dates have been rejected in several cases. In *In re Marriage of Pearson*, 236 Ill.App.3d 337, 350 (1992), a case similar to this case, the wife had medical issues that were difficult to diagnose and affected her ability to work. After finding the record speculative as to the wife's future ability to support herself at the standard of living established during the 24-year marriage, we reversed the trial court's 36-month limit on the award of rehabilitative maintenance and remanded instructing the judge to retain jurisdiction to fully review and reevaluate the need for future maintenance after the 36-months expired.

¶ 21 Additional cases remanded with directions to retain jurisdiction over the maintenance award to review the parties' respective circumstances at a later date and reevaluate the need for future maintenance include *In re Marriage of Kusper*, 195 Ill. App. 3d 494, 500 (1990), (modifying three-year duration limitation to five years so wife can become self-sufficient); *In re Marriage of Carney,* 122 Ill.App.3d 705, 716 (1984) (jurisdiction retained so trial court may review parties' future respective circumstances); and *In re Marriage of Wilder***,** 122 Ill.App.3d 338, 352 (1983) (jurisdiction retained to assess parties' relative circumstances and modify award of maintenance in future)**.**

¶ 22 Mary relies on *In Re Marriage of Grunsten*, where this court found the wife had "likely long-term health care expenses" and that the trial court's finding that the wife was "healthy" and

could work in the future was against the manifest weight of the evidence. *In Re Marriage of Grunsten*, 304 Ill. App. 3d 12, 21 (1999). In *Grunsten*, a physician had been treating the wife's depression for many years. *Id*. The husband did not dispute the evidence of her depression or the reasonable cost of psychiatric care. *Id*. This court held that a spouse is not required to sell assets for self-support where the other spouse has the financial ability to pay sufficient maintenance while meeting his or her own needs. *Id.* at 20.

¶ 23 The issue of maintenance was reserved in *In re Marriage of Lord*, 125 Ill. App. 3d 1 (1984), where the wife presented medical evidence establishing she had symptoms of Raynaud's disease (blood vessel disorder) which might develop into a disabling disease. If the wife did become afflicted, it would most likely occur within two years. *Id*. The trial court reserved the issue of maintenance finding that, as of the hearing date, the wife was not entitled to maintenance, but if the disease progressed, the distribution of property would be inadequate to meet her needs. *Id*. at 4. We affirmed the reservation of maintenance. *Id*. at 5. A factor in *Lord* was that the wife's lack of control over the future consequences that would entitle her to maintenance.

¶ 24 A later case citing *Lord* with approval, found "As in *Lord*, the trial court's *** judgment was a final determination on the then present lack of need of maintenance and the retention of jurisdiction to modify the order and to award maintenance later if circumstances warranted." *In re Marriage of Bingham*, 181 Ill. App. 3d 966, 972 (1989) (citing *Lord*, 125 Ill. App. 3d at 4). The theme throughout these cases is flexibility.

¶ 25 Mary's testimony regarding her symptoms resembled those in *Grunsten* where the wife's symptoms included frequent crying spells, sleep loss, memory loss, continual anxiety, and an

inability to cope with stress. As in *Lord*, the future progression, or absence of progression, of Mary's Parkinson's disease is unknowable.

¶ 26 John argues that nothing in the record supports reserving the issue of maintenance because Mary did not present evidence that she could or would be unable to work and support herself in the future. We disagree. According to the bystander's report, Mary testified that she was under the care of a neurologist; about the effects of the disease on her, both in the past and at the time of trial; and the medications she required. She also testified to symptoms, including tremors lasting for a couple of hours, and affecting her job performance, and that she never knew when her symptoms would reappear. Stress was a factor in flare-ups. While she did not always have trouble walking, her symptoms worsened in the morning to the point she hoped to be able to "make it up the stairs."

¶ 27 Although the trial court's order indicates that it felt at that time Mary had sufficient assets and resources, the learned trial court's reason for leaving the issue of maintenance open indefinitely follows naturally from the circumstances—that Mary's health problems would not alleviate and are known to worsen with time. It makes sense to presume that Mary will be able to meet all of her own needs to the extent she is able to continue working. There is no way of predicting, however, what the future holds, making it appropriate to leave the issue of maintenance open.

¶ 28 John points out that Mary is self-supporting, and the reservation does not set forth an event or time at which the court would address the issue of maintenance, effectively granting the trial court jurisdiction over the parties indefinitely. John ignores that Mary's current employment was not the issue; instead, her future employment was insecure due to the Parkinson's. But courts reserve jurisdiction to monitor circumstances to provide flexibility and avoid speculation.

¶ 29 For instance, in *In re Marriage of Asch*, the trial court expressly stated its intention to review the maintenance award at a later date to determine whether the wife had made a reasonable effort to find a job and become self-sufficient. *Asch*, 100 Ill. App. 3d at 296. Upholding the maintenance award, the court observed the trial court chose a practical alternative designed to "avoid the speculation often inherent in future maintenance awards." *Id.* Rather than speculate regarding the necessity of maintenance three years later, "the trial court added an element of flexibility to its order." *Id.* If after three years the court determined that the wife reasonably tried but failed to find suitable employment, the court would decide that the maintenance should continue, possibly at a higher amount. *Id.* But if the wife chose not to seek employment and begin supporting herself, the court could then deny her further maintenance. *Id.*

¶ 30 Unlike *Asch*, this is not a case concerning future employability, but just the opposite, unemployability. See *In re Marriage of Campise*, 115 Ill. App. 3d 610, 614 (1983) ("Although there is evidence that [the wife] presently suffers from health problems which prevent her from working, there appears to be no evidence that these problems are permanent."). The *Campise* court noted that reserving jurisdiction over the maintenance award for the five-year period "adds flexibility to the trial court's order because the ultimate duration of the award will be based upon the parties' actual circumstances and not upon speculation as to what those circumstances might be." *Campise*, 115 Ill. App. 3d at 614 (citing *Asch*, 100 Ill. App. 3d at 297-98).

¶ 31 Generally, a trial court does not speculate as to the future condition of the parties in deciding maintenance issues. *In re Marriage of Bothe*. 309 Ill. App. 3d 352, 356 (1999). There, the parties had been married for 38 years; the wife was 58 years old, disabled, and unemployed. *Id*. at 353. The initial judgment of dissolution obliged the husband to pay for the wife's medical insurance coverage, $2,000 in monthly maintenance, plus rent for farming land awarded to the

wife, while reserving jurisdiction regarding maintenance-related and other issues. *Id*. at 354. After the wife settled her medical malpractice claim for $3.7 million, the husband petitioned to terminate maintenance. *Id*. The trial court denied his petition but ordered his obligation to pay maintenance abated "subject to further order of the court." Id. at 355. Finding no abuse of discretion, the *Bothe* court noted: "Given the uncertainty of the wife's future medical expenses and insurability, it was necessary for the trial court to reserve jurisdiction on the issue of maintenance to avoid improper speculation." *Id*. at 356.

¶ 32 A specific triggering event as contemplated in *Bothe* would be Mary's inability to work in the future, and with the Parkinson's diagnosis, that possibility exists. Mary had been covered by John's health insurance during the marriage, but her coverage terminated with the divorce. No one knows when the disease will pursue a more aggressive course.

¶ 33 John maintains that Mary's construction of the statute reaches an absurd result and is prohibited. While one approach might be to assign a date for review, the statute does not require a date for review for the very reason the trial court here decided not to assign a date for review, for flexibility under the facts and circumstances. We reject John's interpretation of the court's authority.

¶ 34 Finally, John argues that the trial court improperly took judicial notice of the nature and progression of the Parkinson's disease and its impact on Mary's ability to self-support. He maintains that medical expert testimony should have been presented. We disagree. Mary's disease is not disputed; according to the bystander's report she was diagnosed after 18 months of testing and was under a neurologist's care. Mary wants to continue seeing the same doctors who had identified her disease and monitor her condition. In the meantime, she works full-time,

sometimes with much effort. The uncertainty of her future ability to work was preeminent in the trial court's decision.

¶ 35 The issue of whether a court can modify a maintenance order when the order does not expressly reserve the right of review was presented in *In re Marriage of Carpel*. "Parties can modify prospective orders—such as orders of maintenance and support—because when entering such orders, the court does so by gazing into a cloudy crystal ball and attempting to predict what the future holds for the parties before it. If future circumstances differ from the court's predictions (as manifested by its order), then the parties may petition the court, in compliance with the requirements of section 510 of the Act, to modify its original order to accommodate for the change in circumstances." *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 826 (1992).

¶ 36 Under the circumstances here, Mary's illness necessitated a thoughtful, flexible solution. Because Mary was not yet eligible for Medicare coverage, she would have to secure health insurance for herself once the divorce became final. If and when Mary becomes unemployed, her income would drastically fall. Rather than ordering an amount in maintenance subject to review, the trial court's order recognized the nature of Mary's illness as debilitating but with an uncertain prognosis. As in *Bothe*, the reservation of the maintenance issue "effectively requires respondent to pay nothing to petitioner unless and until there is a significant change in circumstances that would justify maintenance in the future." *Bothe*, 309 Ill. App. 3d at 357. We determine that the trial court's decision to reserve maintenance was appropriate, just, and well within the exercise of its discretion.

¶ 37 Affirmed.