

**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).

2018 IL App (3d) 170042-U

Order filed February 9, 2018

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
LISA MORTENSEN,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois.
Petitioner-Appellant,	)	
	)	Appeal No. 3-17-0042
and	)	Circuit No. 07-D-205
	)	
ROBERT MORTENSEN,	)	Honorable
	)	Dinah Archambeault,
Respondent-Appellee.	)	Judge, Presiding.

---

JUSTICE WRIGHT delivered the judgment of the court.  
Justices Holdridge and McDade concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* The trial court properly vacated the judgment for dissolution of marriage by agreement of the parties. The trial court did not abuse its discretion by granting respondent's motion to reconsider the amount of permanent maintenance and reducing the amount for permanent maintenance by deviating from the statutory guidelines.
- ¶ 2 The petitioner, Lisa Mortensen, appeals from the trial court's decision vacating the judgment for dissolution of marriage entered on August 10, 2011, but leaving the dissolution of

the parties' marital status intact based on the agreement of the parties. Petitioner also contends the trial court erred when determining the amount of permanent maintenance. We affirm.

¶ 3

### FACTS

¶ 4

The petitioner, Lisa Mortensen (petitioner), and the respondent, Robert Mortensen (respondent), married in 1984. On February 6, 2007, petitioner filed a petition to dissolve her marriage to respondent in Will County case No. 07-D-205. On August 10, 2011, the trial court entered a judgment for dissolution of marriage that incorporated the parties' marital settlement agreement.

¶ 5

On August 2, 2013, respondent filed a petition to set aside the 2011 judgment dissolving the marriage pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). Respondent alleged that petitioner committed fraud and made material misrepresentations to respondent and the court. On March 26, 2014, respondent filed a "motion to have credits applied to arrears in support payments and to have the court vacate the original judgment for dissolution of marriage."

¶ 6

On July 28, 2015, the trial court entered an "Agreed Order," containing the following language: "By agreement of the parties in open court[,] \*\*\* [the] Judgment of Dissolution entered 8-10-11 is vacated and held for naught (excluding marriage dissolution)." This order vacated all prior orders entered after August 10, 2011.

¶ 7

In March and April 2016, the trial court conducted an evidentiary hearing on the remaining issues. Petitioner's financial disclosure statement submitted to the court, dated March 2016, documented petitioner's net monthly income was \$2282.27 with expenses of \$6024.03. Petitioner's financial disclosure statement listed a checking account with a balance of \$982.33.

Petitioner also listed a credit card in her name alone with a balance due of \$8437.80, with a monthly payment of \$111, and debt to her parents in the amount of \$40,974.

¶ 8 Respondent's financial disclosure statement documented his net income was \$7657.46 with expenses of \$6124.41. Respondent's financial disclosure indicated respondent's monthly debt obligation was \$3327.40. Respondent had a savings account balance of \$300 and a checking account balance of \$98.12. At the conclusion of the evidentiary hearing, the court took the matter under advisement.

¶ 9 Several months later, on September 14, 2016, the trial court issued a written "Decision and Supplemental Judgment for Dissolution of Marriage," (supplemental judgment) addressing child support, maintenance, and the division of marital property. The supplemental judgment included a finding that petitioner's "realistic monthly expenses were approximately \$1,500.00 per month." The trial court also noted petitioner received monthly foods stamps valued at \$322. The supplemental judgment also contained the following language:

"As Robert's income fluctuates, the court will average Robert's income from 2010 to 2014 to determine maintenance. Robert averaged \$154,351 per year. Lisa is underemployed, working part time, and the court will impute an average annual income of \$20,000.00. Applying the formula [found in section 504(b-1)(1)(A) of the Illinois Marriage and Dissolution of Marriage Act (the Act) 750 ILCS 5/504(b-1)(1)(A) (West 2016)], Robert owes Lisa maintenance of \$3525.44 per month. Given the length of the marriage, the maintenance is permanent, subject to statutory termination or modification provisions. The court declines to deviate from the statutory guidelines."

¶ 10 On November 22, 2016, respondent filed a motion asking the court to reconsider and reduce the maintenance award claiming the court misapplied the law to the facts and failed to consider the needs of both parties when determining the proper amount of maintenance.

¶ 11 The trial court granted respondent the relief he requested in the motion to reconsider the prior maintenance award by deviating downward from the guideline amount of \$3525.44 per month dictated by the formula found in section 504(b-1)(1)(A) of the Act, and entered an order reducing maintenance to \$1,500 per month. The trial court once again considered all relevant factors under section 504 of the Act. When addressing the relevant factors, the trial court stated as follows:

“Realistically, Robert’s present and future earning capacity exceeds Lisa’s earning capacity. Lisa was a stay at home mother devoting time to domestic duties while Robert worked. Robert has no impairment with respect to earning capacity, present or future. Lisa is trained and certificated as a teacher’s assistant and needs no more time to become educated, trained or employed, as she currently works as a teacher’s assistant. The parties enjoyed a nice standard of living but spent beyond their means, as evidenced for example by their marital home valued at over \$400,000.00 and the purchase of a motor home priced at \$179,000.00, both of which they ultimately could not pay for. The marriage was long term, 27 years. Both parties are in their early 50’s and in good health. Lisa received public aid in the form of food stamps. No evidence of tax consequences was presented.

Robert earns an average income of \$154,351.00 annually. Lisa works part time and is underemployed with imputed income of \$20,000.00. Per the judgment, the parties shared equally the value of the marital business, each getting

a value of \$125,000.00. Lisa was awarded the former marital home, which Lisa valued at \$430,000.00, but which was subject to two foreclosure proceedings. She was awarded all equity, if any, and was responsible for all debt. Each party kept \$14,000.00 from assets they sold. Robert was responsible for the motor home debt of \$148,157.92.

Robert's monthly net income is \$7,657.46 with expenses of \$6,124.41 plus his debt obligation per month of \$3,327.40. Robert is \$1,794.35 in the negative each month. However, he is remarried and expenses are total household expenses without contribution from his spouse. If his household expenses were divided, his shortfall is reduced by \$1,704.50 to \$89.85. (This court recognizes no contribution is being made).

Lisa's net income per month is \$2282.72 with expenses of \$6,024.03, so she is \$3,741.31 in the negative each month. (Lisa has debt but lists no monthly debt service, as it is included in her miscellaneous expenses.) However, Lisa has not paid the mortgage or taxes which accounts for a monthly expense of \$3,688.60. Her expenses absent those payments total \$2,335.43. In addition, Lisa has her [27-year-old] daughter and grandchild living with her so her share of the household expenses, assuming they contribute their share, is even less. If divided by three, Lisa's household expense is \$473.81. (The court recognizes no contribution is being made.) Therefore, for household, transportation, personal, and miscellaneous expenses, Lisa has total monthly expenses of \$1,067.81. Lisa is \$1,214.91 in the positive each month. However, the court acknowledges that at some point Lisa will have to pay additional living expenses in the form of rent or

mortgage. Robert pays \$1,400.00 so it is appropriate to add that amount to Lisa's anticipated realistic expenses, giving her total monthly expenses of \$2,467.81, with a monthly shortfall of \$185.09.

As Robert's income fluctuates, the court averaged Robert's income from 2010 to 2014 to determine maintenance. Robert averaged \$154,351 per year. Lisa is underemployed, working part time, and the court imputed an average annual income of \$20,000.00. Applying the formula, Robert owes Lisa maintenance of \$3,525.44 per month. Upon reconsideration, the court does find reason to deviate, based on further consideration of the needs of the parties, in addition to the other relevant factors. Maintenance is awarded to Lisa in the amount of \$1,500.00 per month. Given the length of the marriage, the maintenance is permanent, subject to the statutory termination or modification provisions."

¶ 12 On January 17, 2017, petitioner filed a notice of appeal.

¶ 13 ANALYSIS

¶ 14 In this appeal, petitioner claims the trial court erred by vacating the August 10, 2011, judgment for dissolution by agreement because the trial court lacked jurisdiction to do so. Petitioner also submits that respondent's section 2-1401 petition to vacate was insufficient as a matter of law and resulted in an improper bifurcated approach to the dissolution of this marriage. Petitioner also claims the trial court abused the court's discretion by allowing a motion to reconsider the amount of the maintenance award and deviating downward from the statutory guideline amount of \$3525.44 per month to \$1500 per month.

¶ 15 Respondent argues the trial court's July 28, 2015, ruling resulted from an agreed order approved by petitioner and now precludes petitioner's challenge based on jurisdiction and the

sufficiency of the petition on appeal. Additionally, respondent argues the trial court's decision to reduce petitioner's maintenance award was proper under the circumstances. The record reveals the 2011 judgment of dissolution was vacated on July 28, 2015, pursuant to an agreed order submitted to the court and approved by both parties. Generally, a party may not seek review of an order subject to the agreement of that party. *Grubert v. Cosmopolitan National Bank of Chicago*, 269 Ill. App. 3d 408, 411 (1995). Absent fraud, such an agreed disposition is not appealable unless rights or interests of the public have been affected. *Id.* On this basis, we conclude petitioner knowingly waived any concerns regarding the authority of the court or the propriety of the relief requested in the pleading that led to this agreed order. Therefore, the trial court's decision to enter the agreed order is affirmed.

¶ 16 Alternatively, petitioner claims the trial court erred when the trial court granted respondent's motion to reconsider the court's ruling to impose the statutory amount for permanent maintenance. Section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)) provides a list of factors a trial court may consider in determining maintenance, including but not limited to the parties' income, property, needs, earning capacities, and the standard of living established during the marriage. Section 504(b-1)(1) of the Act provides a formula for determining the amount and duration of maintenance under the guidelines. 750 ILCS 5/504(b-1)(1) (West 2016)). Section 504(b-1)(2) of the Act provides that any award of maintenance that deviates from the statutory guideline shall be made after the court's consideration of all relevant factors set forth in section 504(a). 750 ILCS 5/504(b-1)(2) (West 2016)). Finally, section 504(b-2)(2) of the Act provides that if the trial court deviates from the otherwise applicable guidelines, 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)(2) (West 2016)).

¶ 17 A trial court enjoys broad discretion in determining the propriety, amount, and duration of maintenance, and absent a clear abuse of discretion, a trial court’s maintenance award will not be reversed. *In re Marriage of Rogers*, 352 Ill. App. 3d 896, 899 (2004). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). When a party challenges the trial court’s factual findings supporting a maintenance award, we will affirm unless the court’s findings were clearly against the manifest weight of the evidence. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1041 (2008). The trial judge sees and hears the witnesses and has a superior vantage point to assess the demeanor and credibility of each witness when weighing the evidence presented to the court. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 6.

¶ 18 Based on the statutory formula, the trial court’s supplemental judgment order dated September 14, 2016, required respondent to pay permanent maintenance in the amount of \$3525.44 per month. After reconsideration, the trial court reduced the amount of permanent maintenance from \$3525.44 per month to \$1500 per month and entered findings supporting the court’s decision.

¶ 19 On appeal, petitioner speculates the trial court must have believed her eight-year-old grandchild had the ability to contribute to petitioner’s household expenses. This argument is unsupported and unpersuasive. In this case, the trial court concluded that petitioner grossly overstated petitioner’s living expenses by including all of the expenses related to petitioner’s 27-year-old daughter and petitioner’s grandchild. The record does not establish that petitioner had a duty to support petitioner’s 27-year-old daughter or petitioner’s grandchild. Consequently, we



agree the trial court properly determined the expenses related to persons other than petitioner inaccurately overinflated petitioner's household expenses. The trial court's decision to exclude these expenses when calculating maintenance was consistent with the Act that requires the trial court to consider all the relevant factors, including, "the needs of each party." 750 ILCS 5/504(a)(2) (West 2016).

¶ 20 Next, petitioner claims the trial court erred when the court reduced petitioner's expenses by the amount petitioner claimed to be paying for mortgage payments. According to the trial court's December 22, 2016, decision and order, petitioner calculated her own living expenses to be \$6024.03 per month, which included a recurring monthly expense of \$3688.60 for the mortgage and taxes pertaining to petitioner's residence.

¶ 21 It is undisputed that petitioner's residence, the former marital residence, was subject to foreclosure proceedings resulting from petitioner's failure to pay mortgage payments in the amount petitioner claimed as a monthly expense. Petitioner asserts, "[t]here should be some consideration about the cost of paying for a place to live, at least for [petitioner] alone, based on the standard of living established during the marriage."

¶ 22 Contrary to petitioner's argument on appeal, the trial court did not fail to consider housing costs for petitioner. Rather, the record reveals that the trial court's December 22, 2016, decision and order states that "the court acknowledges that at some point [petitioner] will have to pay additional living expenses in the form of rent or mortgage." The court concluded "Robert pays \$1,400.00 so it is appropriate to add that amount to Lisa's anticipated realistic expenses."

¶ 23 Finally, petitioner argues the trial court erred by reducing her maintenance award from the guideline amount of \$3525.44 per month to \$1500 per month because she claims the evidence shows respondent has the ability to pay a higher maintenance award without impacting

his ability to enjoy the lifestyle the parties established during the marriage. In this case, the trial court acknowledged the parties enjoyed a high standard of living in the marriage, but recognized this lifestyle was not one the couple could reasonably afford or maintain following the dissolution of their marriage.

¶ 24 In this case, the trial court complied with the requirements of section 5/504(b-2)(2), by stating the court’s reasons for deviating from the statutory guidelines by focusing on the “needs of the parties” as well as other relevant factors. 750 ILCS 5/504(b-2)(2) (West 2016). Therefore, we conclude the trial court’s decision granting respondent’s motion to reconsider the prior statutory amount of maintenance order and ordering respondent to pay a reduced amount of permanent maintenance should be affirmed.

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Will County is affirmed.

¶ 27 Affirmed.