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2018 IL App (3d) 170517-U

Order filed July 23, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
WILLIAM E. JONES,)	Rock Island County, Illinois
)	
Petitioner-Appellant,)	Appeal No. 3-17-0517
)	Circuit No. 15-D-361
and)	
)	
DEBRA S. JONES,)	Honorable
)	Lori R. Lefstein
Respondent-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court equitably divided the parties' marital estate based on the proper factors and did not err in awarding wife permanent maintenance.
- ¶ 2 Petitioner Williams Jones and respondent Debra Jones were granted a dissolution of their marriage. The trial court divided the marital estate and awarded Debra maintenance. William challenges the property division and the maintenance award, arguing they were improperly based

on his federal veteran's disability income. In the alternative, William objects to the property distribution as unequitable and maintenance award as not warranted. We affirm.

¶ 3

FACTS

¶ 4

Petitioner William Jones and respondent Debra Jones were married in June 1991. At the time of trial all the parties' children had reached the age of majority and three of the children resided with Debra. William filed a petition for dissolution of the marriage in July 2015. At trial, the following testimony was presented.

¶ 5

William testified he was 49 years old, diagnosed with paranoid schizophrenia and disabled. He had not worked since 1987. He received monthly disability benefits from the Veteran's Administration (VA) in the amount of \$3,180.66 and \$732 from the Social Security Administration (SSA). His benefits would be reduced to \$3,712.66 because his youngest child turned 18. He did not pay taxes on his disability benefits.

¶ 6

On his financial affidavit, William listed his gross monthly income as \$3,912.66 and expenses of \$3,909.99, resulting in a monthly shortfall of \$170.32. His bank accounts contained less than \$200. He had credit card and loan debts of \$36,584.60, on which he made total monthly payments of \$1,302.00. William remained in the marital home, which the parties agreed was worth \$120,000. The house carried a mortgage of \$102,000, with monthly payments of \$548, including insurance. As a disabled veteran, William did not pay any real estate taxes on the property.

¶ 7

William testified that he was incapable of holding a job and was not good with a budget. When he and Debra were living together, he paid the household bills and gave Debra \$800 for groceries each month. She also had the money from her own paycheck. He was responsible for incurring the credit card and the loan debts. William liked to buy electronics, some of which he

gives to his children as gifts. He also buys audio books and iTunes, amassing an iTunes collection of 19,000 songs.

¶ 8 Debra testified she was 48 years old and employed fulltime at K-Mart, earning \$10.51 per hour for a 40-hour work week. She had gross monthly earnings of \$1,841, with net earnings of \$1,547. Her monthly expenses amounted to \$2,901.29. She had no debt. Three of her adult children lived with her and her 20-year-old niece was also temporarily staying. One son paid her \$900 per month to assist with household expenses. He had no obligation to continue to help her and could move out at any time. She had been promoted twice in three years but did not receive a corresponding increase in pay. She did not anticipate a substantial improvement in her earning capacity.

¶ 9 The trial court issued an opinion on April 24, 2017, in which it divided the parties' marital estate and awarded Debra permanent maintenance in the amount of \$460 per month. The court opined that William's expenses "should be significantly lower" and that he "consistently spends money on non-essential items." The court also noted that Debra's expenses included those of her adult children who lived with her and that she had no legal obligation to support them, even if she believed she had a moral responsibility. The court found that neither William nor Debra were likely to have a substantial increase in income or in the future acquisition of assets.

¶ 10 The court divided the marital estate, basing the division on the disparity in the parties' incomes. It awarded Debra the life insurance policy with a net value of \$7,066 and a loan balance of \$6,278, the camper valued at \$4,000 with no set-off for William, the 2015 state and federal tax refunds; half the 2016 federal tax refund and all the state refund, and half the approximately \$17,000 equity in the marital home. William was ordered to refinance the home to

remove Debra's name from the loan and mortgage, and if he could not refinance, the home was to be sold and the proceeds equally divided. Lastly, the court found that Debra's payment to William of half the 2016 federal tax refund could be offset against her share of the house equity.

¶ 11 In awarding maintenance, the trial court found that William's gross monthly earnings were more than double Debra's gross monthly earnings. While she received monthly financial assistance from her son, he had no obligation to contribute. The court found that Debra needed maintenance and that William could pay it and did not need it. The court rejected Debra's request for \$2,000 per month and determined the maintenance guidelines amount of \$460 was appropriate. Acknowledging the long-term marriage in excess of 20 years, the court found maintenance should be permanent.

¶ 12 The court entered a judgment of dissolution on May 26, 2017, mirroring its April 24 opinion. William moved to reconsider and to reopen. In his motion, he argued that the trial court erred in failing to divide the 2015 and 2016 state tax refunds, the value of the camper and the State Farm life insurance policy. The court granted the motion to reconsider and amended the property division. It ordered that the 2015 tax refunds, the 2016 state tax refund, and the \$4,000 camper value, which it had originally awarded in full to Debra, be divided equally between the parties. The court also clarified that Debra was responsible for the loan on the life insurance policy it awarded to her. The amount that Debra owed William per the amended distribution was to be offset against her share of the equity in the marital home. William timely appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, William raises two issues: whether the trial court erred in considering his disability payments in allocating the marital property and awarding maintenance and whether it erred in the property allocation and maintenance award.

¶ 15 We first address William’s claim that the trial court’s decision violates the United States Constitution and federalism principles. William asserts that statutory and case law prohibit the trial court from considering his federal disability benefits in allocating marital property and awarding maintenance. William raises this issue for the first time on appeal and we find it is waived. *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994) (issues raised for the first time on appeal are forfeited) (citing *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975)). We reject his argument that we should review the case in order to achieve a just result and maintain uniform precedent despite forfeiture. *In re Jamari R.*, 2017 IL App (1st) 160850, ¶ 52 (“ ‘Even though an issue is waived, we may address it based on our obligation to achieve a just result and maintain a uniform body of precedent’ ”) (quoting *Country Mutual Insurance Co. v. Hagan*, 298 Ill. App. 3d 495, 507 (1998)).

¶ 16 We next consider William’s arguments regarding the property distribution and maintenance award. William argues the trial court failed to allocate the marital estate in just proportions. He submits the trial court awarded the majority of the property to Debra and all the debt to him.

¶ 17 In a dissolution proceeding, the court “shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including: “(1) each party’s contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property; ***; (3) the value of the property assigned to each spouse; (4) the duration of the marriage; (5) the relevant circumstances of each spouse when the division of property is to become effective; ***; (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties; ***; (10) whether the apportionment is in lieu of or in addition to maintenance; and (11) the

reasonable opportunity of each spouse for future acquisition of capital assets and income.” 750 ILCS 5/503(d)(1), (3)-(5), (8), (10)-(11) (West 2016).

¶ 18 In dividing marital property, each case rests on its own facts and the touchstone of apportionment is whether the division was equitable in nature. *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 821 (2007). An equitable division does not require an equal division and a spouse may be awarded a greater share where warranted. *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 71. We will not disturb a trial court’s property allocation absent an abuse of discretion. *In re Marriage of Winne*, 239 Ill. App. 3d 273, 280 (1992).

¶ 19 The parties’ marital assets included the 2015 and 2016 tax refunds, the camper, a life insurance policy with a net value of \$7,066 and a \$6,278 loan on it, and a marital home with \$17,000 in equity. The court equally divided the value of all the assets except the life insurance policy and marital home. It awarded Debra the life insurance policy and ordered her to pay the loan on it. It awarded William the marital home and ordered him to pay the loan on it. The court ordered William to be responsible for the credit card and other loan debts. William was also ordered to refinance the home and remove Debra from the mortgage and house loan. The parties retained their personal property and banks accounts. We find the property division was equitable, noting that William incurred the debts assigned to him and agreed at trial to pay them. The court did not err in its property division.

¶ 20 We next consider William’s challenge to the maintenance award. He argues that Debra did not need maintenance as her monthly income was sufficient to satisfy her monthly expenses and the property division eliminated any need for maintenance. William asserts that, in contrast, he is permanently disabled and the fact that he can pay maintenance does not mean he should be required to pay.

¶ 21 In determining whether to award maintenance, the trial court considers the following factors, in relevant part: each party's income and property, including the marital property assigned to them, the non-marital property assigned to the party seeking maintenance and the financial obligations imposed on the parties as a result of the dissolution; each party's needs; each party's realistic present and future earning capacity; any impairment of the realistic present or future earning capacity of the party who would be required to pay maintenance; the parties' standard of living during the marriage; the marriage's duration; the parties' age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs; all sources of income, whether public or private, "including, without limitation, disability and retirement income;" and any other factor the court expressly finds to be just and equitable. 750 ILCS 5/504(a)(1)-(3), (5), (7)-(10), (14) (West 2016).

¶ 22 The reasonable needs of the spouse seeking maintenance is the benchmark for determining maintenance in light of the parties' standard of living during the marriage, the ability to become self-supporting, a spouse's income producing property, if any, and the value of the parties' nonmarital property. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004) (citing *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972 (1992)). The trial court has wide latitude in determining which factors to use in determining a spouse's reasonable needs and is not limited to the statutory factors. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 28. We will not reverse a trial court's maintenance decision unless it was an abuse of discretion. *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 59.

¶ 23 The court found Debra was in need of maintenance. We agree and consider the statutory factors support a maintenance award. Debra's monthly net income was \$1,547. She listed her monthly expenses at \$2,901, which the court found included living expenses for her adult

children and her niece. With a reduction in her expenses to eliminate the cost of supporting her children, Debra would still struggle to make ends meet. While she had been promoted, she did not receive pay raises as a result. Debra was unlikely to experience a substantial increase in income and her earning capacity remained limited. Debra lived week to week and had little or nothing left at the end of the month despite working fulltime. The court acknowledged the parties were married for more than 20 years. The court determined that William was able to pay maintenance and noted that William's monthly gross income was more than twice that of Debra's monthly gross income. William had sufficient income to meet his monthly needs and was able to spend as he wished. The court awarded Debra \$460 per month maintenance as calculated per the spousal support formula. We find the court did not abuse its discretion in fashioning its maintenance award.

¶ 24

CONCLUSION

¶ 25

For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 26

Affirmed.