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2018 IL App (3d) 170617-U

Order filed March 15, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
GAYLE L. MATTINGLY,)	Grundy County, Illinois.
)	
Petitioner-Appellee,)	
)	Appeal No. 3-17-0617
and)	Circuit No. 16-D-71
)	
TIMOTHY F. MATTINGLY,)	
)	Honorable Sheldon R. Sobol,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by awarding petitioner \$1200 in monthly maintenance for 45 months pursuant to section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West 2016)).

¶ 2 This appeal concerns the trial court's maintenance award that it entered during dissolution proceedings between petitioner, Gayle Hutchings, f/k/a Gayle Mattingly, and respondent, Timothy Mattingly. Respondent argues that the trial court erred by ordering him to pay petitioner monthly maintenance. He also claims that the court erred in calculating the

amount of maintenance. Respondent presents no other issues on appeal. We affirm the court's order.

¶ 3 BACKGROUND

¶ 4 The parties married in Grundy County on December 8, 2006. In May 2016, petitioner filed a petition for dissolution of marriage due to irreconcilable differences. They had no children during the marriage.

¶ 5 On January 30, 2017, the trial court held a hearing to address property division and maintenance between the parties. Respondent's nonmarital assets included personal property, bank accounts that contained approximately \$3000, a house in Gardner valued at \$120,000, and an individual retirement account (IRA) that contained over \$600,000. Petitioner's nonmarital assets included personal property, bank accounts that contained approximately \$2200, and an IRA that contained over \$300,000.

¶ 6 Various automobiles, boats, all-terrain vehicles (ATVs), trailers, and recreational vehicles (RVs) comprised the bulk of the marital property. The parties valued the marital property at between \$96,900 and \$99,200. Their valuations did not include a 2013 Ford F-350 (valued at \$40,000) that respondent kept as part of his share of the marital property. Including the 2013 Ford F-350, the marital property value totaled between \$136,900 and \$139,200.

¶ 7 Aside from the vehicles, each party's IRA contributions during the marriage constituted marital property. The parties agreed to split the marital contributions equally. Petitioner's share of respondent's marital contributions totaled \$54,658. Respondent's share of petitioner's contributions totaled \$37,609.

¶ 8 During the hearing, petitioner testified that she worked at LyondellBasell for 31 years. In October 2015 she retired at age 60. Before she retired, her annual salary was approximately

\$54,000. She claimed that respondent asked her to retire “so [they] could enjoy life together and for [petitioner’s] health reasons.” Petitioner suffered from stage four kidney disease and diabetes. She took medication and regularly consulted a nephrologist. As of the hearing date, she retained 22% of her kidney function. In April 2016, six months after petitioner retired, respondent moved to Kalamazoo, Michigan to live with his paramour.

¶ 9 Petitioner lived rent-free in respondent’s house during the dissolution proceedings. However, she knew that she needed to secure her own residence eventually. Without rent or mortgage payments, petitioner’s monthly medical expenses, living expenses, and debt payments totaled over \$4000. She decided to get a job at Brand Energy Solutions to support herself. She earned approximately \$45,000 annually; her net income was approximately \$2400 monthly. She withdrew money from her IRA to cover the remainder of her monthly expenses.

¶ 10 Respondent also testified at the hearing. He worked at Exxon Mobile from 1978 until he retired in 2013. Respondent’s retirement preceded the marital strife that prompted the dissolution proceedings. Between his retirement in 2013 and the parties’ separation in April 2016, respondent lived on his savings, petitioner’s income, and regular withdrawals from his IRA. Because respondent was too young for penalty-free withdrawals, he tried to obtain loans or lines of credit to refund his IRA within 60 days to avoid the early withdrawal penalty.

¶ 11 At the time of the hearing, respondent lived rent-free with his paramour in Michigan. However, he claimed that he incurred \$2131 in monthly living and medical expenses. As a retiree, he had no income. He relied on withdrawals from his IRA.

¶ 12 On May 5, 2017, the court issued its judgment of dissolution of marriage. The judgment ordered the parties to sell the disputed marital property. The court appointed a receiver to collect

the funds from sales, pay the marital debt, and distribute the remaining funds to the parties. The order granted 55% of the proceeds to petitioner, 45% to respondent.

¶ 13 In deciding whether to award petitioner maintenance, the court analyzed the factors set forth in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2016)). The relevant factors include:

“(1) the income and property of each party, including 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; [and]

(10) all sources of public and private income including, without limitation, disability and retirement income.” *Id.* § 504(a)(1)-(10)).

¶ 14 Factors (11) through (14) did not apply to this case. The court found that factors (1), (2), (4), (6), (7), (9), and (10) favored awarding the petitioner maintenance. The value of respondent’s nonmarital assets and share of marital property approximately doubled the value of petitioner’s. Although respondent received no income in retirement, he had significant “but not unlimited” assets. On the other hand, petitioner left a higher paying job at respondent’s request, then took a lower paying job in poor health at age 60 “to exist.” Petitioner’s age and health significantly diminished her future earning capacity. If her health deteriorated or she became unable to work, she had to rely on her IRA and any maintenance award to support her lifestyle. Since the parties separated, petitioner relied on regular withdrawals from her IRA to pay her monthly expenses that she could not cover with her compensation from Brand Energy Solutions.

¶ 15 The court found that factors (3) and (5) disfavored awarding maintenance. Respondent retired in 2013 and was unlikely to reenter the work force due to his age. Although the value of his nonmarital property was significant, he was 58 years old and had to “live off these funds for

the remainder of his life.” For factor (8), the court simply recognized that the parties were married for 9.5 years.

¶ 16 Based on its analysis of the section 504(a) factors, the court awarded petitioner maintenance. Section 504(b-1)(1)(B) (*id.* § 504(b-1)(1)(B)) established 45 months as the statutory duration of maintenance for a 9.5-year marriage. Because respondent was retired, “there [existed] no income stream from which to apply the formula provided in Section 504(b)(1)(A) [*id.* § 504(b-1)(1)(A)].” The court deviated from the standard maintenance formula pursuant to section 504(b-2)(2) (*id.* § 504(b-2)(2)). The court found that “due to her age and health [petitioner] will need assistance and assets to pay for present healthcare and medical expenses as well as to assist in undertake [*sic*] the cost of her housing.” The court ordered respondent to pay petitioner \$1200 in monthly maintenance for 45 months.

¶ 17 The trial court denied respondent’s motion to reconsider on August 23, 2017. This appeal followed.

¶ 18 ANALYSIS

¶ 19 Respondent argues that the trial court erred in granting petitioner maintenance and in calculating the amount of maintenance. He claims that the court had no basis to order maintenance under section 504. Respondent’s argument primarily relies on the discrepancy between his income (\$0) and petitioner’s (approximately \$45,000 per year). Respondent also argues that the court failed to comply with section 504(b-2)(2) in determining the amount of maintenance. He “submits that it was error for the court not to set forth with more precision how the court determined the maintenance figure of \$1,200 per month.” We address each argument in turn.

¶ 20 I. Decision to Award Maintenance

¶ 21 The decision to award maintenance is within the trial court’s sound discretion; we do not disturb the trial court’s decision absent an abuse of that discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would adopt the trial court’s view. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). As a general rule, we presume that the trial court’s decision whether to award maintenance is correct. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008).

¶ 22 Respondent argues that the court had no basis upon which to award petitioner maintenance. He points out that the standard maintenance calculation set forth in section 504(b-1) required petitioner to pay respondent maintenance—her income was \$45,000 per year while he received no regular income during retirement.

¶ 23 This argument ignores the purpose of maintenance—to enable a spouse who incurs individual disadvantages during the marriage partnership to maintain a similar standard of living after divorce. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 73. The record indicates that respondent contributed more money to the parties’ standard of living during their marriage, both before and after he retired. Petitioner retired from a higher paying job at respondent’s request in October 2015. Six months later, respondent moved to Kalamazoo, Michigan to live with his paramour. The record indicates that respondent lived rent-free with his paramour and maintained a similar standard of living as he did during the marriage. On the other hand, the record indicates that petitioner’s standard of living decreased substantially; she had to reenter the work force at a lower salary to make ends meet. Respondent’s retirement and lack of steady income does not automatically excuse him from maintenance.

¶ 24 Respondent also contends that the court could have employed other options to rectify the disparity between the parties’ assets. He sets forth several examples. The court could have

awarded petitioner a larger share of the marital assets; it could have ordered the receiver to sell the 2013 Ford F-350 and include the \$40,000 into the marital estate; and/or it could have ordered respondent to pay all of the marital debt. In short, the court could have reached the same monetary distribution without ordering maintenance.

¶ 25 This argument undermines respondent’s position. He apparently concedes that the court properly awarded petitioner the \$54,000 *value* of maintenance; he takes issue with paying \$1200 in monthly maintenance for 45 months rather than paying \$54,000 up front in the property distribution. We agree that the court had discretion to award petitioner \$54,000 worth of additional marital assets in the property distribution; however, that is not what the court decided to do. Undoubtedly there are many divorce cases where courts could award a party more marital property instead of ordering maintenance, but they are not required to do so. Nothing in respondent’s argument suggests that petitioner was not legally or reasonably entitled to \$54,000 in total maintenance. We decline his invitation to supersede the trial court’s sound discretion and restructure its distribution of marital assets.

¶ 26 II. Maintenance Calculation

¶ 27 Respondent also takes issue with the trial court’s maintenance calculation. We will not disturb the court’s maintenance calculation absent an abuse of discretion. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 772 (1998).

¶ 28 Respondent argues that the court failed to follow section 504(b-2)(2) (750 ILCS 5/504(b-2)(2) (West 2016)) in determining the amount of maintenance. Section 504(b-2)(2) states: “if the court deviates from otherwise applicable [maintenance] 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.” *Id.* According to respondent,

the court erred by not stating the amount of maintenance under the guidelines; the guideline calculation would have required petitioner to pay respondent monthly maintenance.

¶ 29 The amount of maintenance in this case was indeterminable; the court was not required to state it under section 504(b-2)(2). The court concluded that section 504(a)'s factors favored awarding maintenance to *petitioner*, not respondent. Because petitioner worked and respondent did not, the standard maintenance calculation could only result in *respondent* receiving maintenance—it was irrelevant to the court's determination.

¶ 30 The court's order recognized the lack of respondent's "income stream from which to apply the formula provided in Section 540(b)(1)(A)." In other words, the court found that petitioner should receive maintenance, and then recognized that it must deviate from the standard formula due to respondent's lack of income. These findings satisfied section 504(b-2)(2).

¶ 31 Finally, respondent contends that the court erred by not specifying how it calculated the \$1200 monthly maintenance. Although the trial court must consider all the relevant statutory factors, it need not make specific findings as to how it determined the amount of maintenance. *In re Marriage of Nord*, 402 Ill. App. 3d at 293. The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of his or her standard of living established during the marriage. *Id.*

¶ 32 Due to petitioner's age and health, the court determined that she needed assistance with her monthly living expenses, medical expenses, and future rent or mortgage payments. The record established that, not considering rent or mortgage payments, petitioner's monthly expenses outpaced her income by approximately \$1600. The record also established that petitioner retired for six months during the marriage, then took a lower paying job to support herself after respondent moved to Michigan. A court could reasonably find that the total maintenance award

(\$54,000) over 45 months is less than the monetary losses petitioner incurred by retiring from her job at LyondellBasell, where she made \$54,000 annually, during the marriage. She received no income for six months (\$27,000) and her job at Brand Energy Solutions paid her \$9000 less annually (\$33,750 over 45 months)—a total of \$60,750. Regardless of how the court determined the \$1200 monthly maintenance figure, it is not unreasonable. We find no abuse of discretion.

¶ 33

CONCLUSION

¶ 34

For the foregoing reasons, we affirm the judgment of the circuit court of Grundy County.

¶ 35

Affirmed.