NOTICE
Decision filed 05/17/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 170067-U

NO. 5-17-0067

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ROGER HALLERAN,	)	Jefferson County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 15-D-12
	)	
SUSAN HALLERAN,	)	Honorable
	)	Timothy R. Neubauer,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court did not strictly follow the requirements of section 401(b) of the Marriage and Dissolution of Marriage Act (750 ILCS 5/401(b) (West 2016)), and therefore did not properly reserve the issue of maintenance, we reverse and remand.

¶ 2 Roger Halleran appeals from the trial court's final judgment dissolving his marriage to Susan Halleran. The trial court found that while an order of maintenance was not appropriate at that time, the court reserved ruling on the maintenance issue. The trial court ordered Roger to indefinitely provide Susan and the court with quarterly income statements and annual income tax returns. For the reasons outlined in this order, we

reverse that portion of the trial court's judgment reserving the issue of maintenance and remand the case to the trial court.

¶ 3 FACTS

¶ 4 On January 24, 2017, Roger and Susan divorced after 36 years of marriage. In its judgment order, the trial court evenly divided the property between Roger and Susan. Susan requested maintenance. The trial court noted that Susan was employed at a sawmill earning $133 per day. The sawmill work was physically demanding and was seasonal in nature. Susan testified that she enjoyed working at this job and had no plans to seek other employment.

¶ 5 The sawmill operated as an informal partnership for the past 15 to 20 years. The two partners were Roger and his brother, Ronald. At the hearing, Roger testified that he and his brother were dissolving the partnership. Roger testified that he had worked at the sawmill since 1981. He stopped working at the sawmill in July 2016, after his niece filed an emergency order of protection against him and he was temporarily barred from going near the sawmill. Although Roger's niece did not pursue a permanent order of protection, he did not return to work at the sawmill.

¶ 6 Roger testified that since July 2016 he had worked at miscellaneous part-time jobs outside of the sawmill. He stated that he worked part-time for another brother, Robert, who owned his own sawmill. Roger also held a commercial driver's license and had explored available truck-driving jobs in the area, but opted not to pursue that field of work because the hourly rate of pay was too low.

¶ 7 At the hearing, the parties provided information about their income in 2014 and 2015. In 2014, the parties filed their final joint income tax return. Susan testified that she earned $7100 working at the sawmill in 2014. The 2014 adjusted gross income for Susan and Roger was $80,935. In 2015, the parties filed individual income tax returns. In 2015, Susan's adjusted gross income was $10,053; Roger's adjusted gross income was $23,165.

¶ 8 After considering all statutory factors, the trial court held that "maintenance is not appropriate at this time." Although the court declined to award maintenance, the court ordered Roger to produce quarterly income statements to Susan and the court. The trial court required that the quarterly statement include copies of all paystubs, other evidence of income, and monthly bank statements. In addition, the trial court required Roger to annually send Susan and the court a copy of his income tax returns, including all attachments and schedules.

¶ 9 At the hearing, Roger twice asked the judge for "how long" he would need to provide the quarterly and annual documents. In response, the judge said: "Till hell freezes over. It just goes on."

¶ 10 At the time of the hearing, Roger's income was not steady because he was no longer working at the sawmill he owned in partnership. The trial judge expressed concern that Roger was purposefully not seeking sustained employment. The judge advised Roger that if he failed to submit the required income documentation, he would base a maintenance award on Roger's 2014 annual income and perhaps on earlier years in which Roger's income greatly exceeded his stated 2015 income.

¶ 11 LAW AND ANALYSIS

¶ 12 On appeal, Roger claims that the trial court's order reserving the issue of maintenance was erroneous. He also contends that the trial court exceeded its statutory authority by ordering him to indefinitely produce quarterly income reports and annual income tax returns to Susan and the court.

¶ 13 Jurisdiction

¶ 14 Although not raised by either party, we have an independent duty to determine if this court has jurisdiction to hear the appeal. *In re Marriage of Bothe*, 309 Ill. App. 3d 352, 355, 722 N.E.2d 301, 303 (1999). We must dismiss the appeal if this court lacks jurisdiction. *Id.* (citing *Franson v. Micelli*, 172 Ill. 2d 352, 355, 666 N.E.2d 1188, 1189 (1996); *Anest v. Bailey*, 265 Ill. App. 3d 58, 63, 637 N.E.2d 1209, 1213 (1994)).

¶ 15 Roger filed this appeal pursuant to Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Rule 303 authorizes appeals from final judgments. Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). Therefore, we must decide if the trial court's January 24, 2017, order was a final judgment. "Generally, an order explicitly reserving an issue for further consideration or otherwise manifesting the trial court's intention to retain jurisdiction for the entry of a further order is neither final nor immediately appealable." *Marriage of Bothe*, 309 Ill. App. 3d at 355 (citing *In re Guzik*, 249 Ill. App. 3d 95, 98, 617 N.E.2d 1322, 1324-25 (1993)).

¶ 16 However, Illinois courts have consistently held that when the reservation is designed to reassess both the recipient's need for maintenance and/or the donor's ability to pay, the judgment is final. *In re Marriage of Snow*, 277 Ill. App. 3d 642, 651-52, 660

N.E.2d 1347, 1353-54 (1996) (stating that the husband's current inability to pay maintenance was an appropriate circumstance for reserving maintenance); *In re Marriage of Lord*, 125 Ill. App. 3d 1, 3, 465 N.E.2d 151, 152 (1984) (a two-year reservation of the maintenance issue was final and appealable because the wife did not then need maintenance, but could possibly require maintenance in the future due to a potential medical issue); see also *In re Marriage of Bingham*, 181 Ill. App. 3d 966, 967, 537 N.E.2d 1158, 1159 (1989) (a two-year reservation of the maintenance issue until the parties' minor child turned 18 years of age was final and appealable); *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 30, 636 N.E.2d 1141, 1146 (1994) (a six-year reservation of maintenance was final where the wife was entitled to maintenance but the husband was unable to currently pay maintenance).

¶ 17 In accordance with the cases cited, we conclude that the trial court's order was final and thus we have jurisdiction to consider Roger's appeal. We acknowledge that this case is factually different from the cases cited, as here the trial court ordered an indefinite period of reservation. Nevertheless, the reasons the court stated for its need to revisit the maintenance issue affirm the finality of the order. The trial court was concerned that Roger's income on the date of the hearing was artificially low. Although Susan may have had a valid need for maintenance, the court would not set a maintenance amount at that time because of the current state of Roger's income. The lengthy reservation, coupled with the trial court's indefinite order that Roger produce current income information to Susan and the court, was the court's design to reassess "the donor's ability to pay."

Marriage of Snow, 277 Ill. App. 3d at 651-52. Accordingly, we have jurisdiction to hear Roger's appeal.

¶ 18 Reservation of Maintenance and Term of Reservation

¶ 19 We begin our analysis of this maintenance-related issue with a brief review of the statutory guidelines. Section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) sets forth a two-step process for determining maintenance. 750 ILCS 5/504 (West 2016). In the first step, the trial court must consider the relevant factors listed in section 504(a) and conclude whether maintenance should be granted or denied. *Id.* § 504(a). If the trial court finds that an award of maintenance is or is not appropriate, the court must state its reasoning and must make specific findings referencing each relevant factor of section 504(a). *Id.* § 504(b-2). The second step is dependent upon whether the trial court awards maintenance. *Id.* § 504(b-1). If the trial court awards maintenance, then the court must determine the amount and duration of the maintenance award.

¶ 20 Roger argues that once the court denied maintenance pursuant to section 504 of the Act, section 504 does not allow modification of that order. Although not specifically articulated, Roger essentially claims that the trial court could not reserve the issue of maintenance.

¶ 21 While section 504 of the Act does not contain any specific reference to a trial court's ability to reserve the issue of maintenance, section 401(b) does. Section 401(b) states:

> "Judgment shall not be entered unless *** the court has considered, approved, reserved or made provision for *** the maintenance of either spouse ***. *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.) *Id.* § 401(b).

The supreme court has explained that the term "appropriate circumstances" includes a factual situation where a party is unable to pay maintenance if ordered to do so. *In re Marriage of Cohn*, 93 Ill. 2d 190, 199, 443 N.E.2d 541, 545 (1982).

¶ 22 Based upon the language of section 401(b), we disagree with Roger's assertion that a trial court is prohibited from reserving jurisdiction. However, we find that the trial court did not follow the requirements of section 401(b) and therefore conclude that the court did not properly reserve jurisdiction.

¶ 23 Courts must strictly construe the statutory language of the Act. *In re Marriage of Burkhart*, 267 Ill. App. 3d 761, 765, 643 N.E.2d 268, 271 (1994) (citing *Nardi v. Segal*, 90 Ill. App. 2d 432, 436-37, 234 N.E.2d 805, 807 (1967)). "A court must act within the statutory authority granted to it in a dissolution of marriage action; it may not rely upon its general equity powers." *Id.* (citing *In re Marriage of Brown*, 225 Ill. App. 3d 733, 740, 587 N.E.2d 648, 653-54 (1992)).

¶ 24 Because compliance with section 401(b) of the Act is not merely aspirational, courts have consistently held that if the trial court did not follow the requirements of the statute, then the trial court did not properly reserve the issue. See *id.* (where the parties did not agree to reserve the issue of division of a pension and the party seeking the division of the pension did not ask the court to reserve the issue, the trial court did not properly reserve the issue); *In re Marriage of Britton*, 141 Ill. App. 3d 588, 591, 490

N.E.2d 1079, 1080 (1986) (where the parties did not agree to reserve the division of pensions until a time when the plans became payable, and neither party asked the court to reserve the issue, the trial court failed to comply with section 401(b), and the trial court did not properly reserve the issue).

¶ 25 Here, the court made a *sua sponte* decision to reserve the issue of maintenance. The record does not reveal either an agreement to reserve the issue or a motion to reserve the issue as required under the statute. 750 ILCS 5/401(b) (West 2016). There is, however, support in the law that would allow the trial court to reserve the question of maintenance without an agreement or formal written motion, if the record shows that one of the parties orally requested reservation and that appropriate circumstances existed for reservation. *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 692-93, 567 N.E.2d 552, 561 (1991).

¶ 26 The trial court is not precluded from reserving the issue of maintenance on remand. However, the court must follow the plain language of section 401(b) and enter its order with the appropriate findings. 750 ILCS 5/401(b) (West 2016).

¶ 27 Roger also argues that the trial court's indefinite reservation of the maintenance issue is erroneous. Because the trial court did not properly reserve the issue of maintenance, we are not able to address Roger's claim about the term of the reservation, as that claim is now moot. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291, 835 N.E.2d 797, 799 (2005). Furthermore, courts of review are not allowed to render advisory opinions to guide future litigation. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10, 51 N.E.3d 788.

¶ 28 CONCLUSION

¶ 29 For the reasons stated in this order, we reverse the judgment of the Jefferson County circuit court on the issue of reservation of maintenance and remand the case for further proceedings consistent with this order. We affirm the remainder of the court's judgment.

¶ 30 Affirmed in part, reversed in part, and remanded with directions.