2018 IL App (5th) 170470-U

NO. 5-17-0470

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MICHELLE E. COZADD,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 15-D-193
	)	
EVAN H. COZADD,	)	Honorable
	)	Julia R. Gomric,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.[*]

ORDER

¶ 1 *Held*: Where the trial court considered all relevant statutory factors and the evidence submitted by both parties, the court did not abuse its discretion in awarding maintenance to Michelle E. Cozadd in its October 27, 2017, amended judgment of dissolution of marriage. Where the trial court's maintenance calculation included an incorrect calculation of income, we modify the judgment. Where Evan H. Cozadd did not appeal the trial court's January 26, 2016, order denying his motion to reconsider the original judgment of dissolution of marriage, we do not have jurisdiction to consider that portion of his appeal.

¶ 2 Evan H. Cozadd (Evan) appeals from the trial court's October 27, 2017, amended judgment of dissolution of marriage. This court vacated the trial court's original award of maintenance and remanded for reconsideration in compliance with the relevant factors in

[*]Justice Goldenhersh fully participated in the decision prior to his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6, 605 N.E.2d 544 (1992).

sections 504(a) and 504(b-2) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), (b-2) (West 2014)). *In re Marriage of Cozadd*, 2017 IL App (5th) 160080-U, ¶ 18. On remand, the trial court considered all relevant factors and awarded maintenance to Michelle E. Cozadd (Michelle) in the amount of $546.30 per month for 6.6 years. On appeal, Evan argues that the maintenance award was incorrect for several reasons. He claims that the trial court miscalculated his income; that Michelle did not sufficiently establish a need for maintenance; that he lacked the means to pay maintenance; that the trial court failed to consider his potential future earning capacity; and that the trial court failed to consider that the monthly child support he was receiving had abated. For the reasons stated in this order, we affirm the trial court's order of maintenance, but modify the amount awarded in the judgment.

¶ 3 BACKGROUND

¶ 4 Michelle and Evan separated after 11 years of marriage. When they married, Michelle was 35 and Evan was 38. Michelle was employed by the Illinois Environmental Protection Agency. Evan worked for the Air National Guard as a civilian federal technician and also as an Air National Guard Reservist. Michelle and Evan did not have children together. Evan's two daughters from a previous relationship lived with Michelle and Evan throughout the marriage.

¶ 5 Michelle moved out of the marital home in January 2015 and into an apartment. Evan continued to live with his two daughters in the marital home. On March 9, 2015, Michelle filed a petition to dissolve the marriage. The trial was held in November 2015.

¶ 6 Michelle testified at trial that her current annual gross income was $80,172. After payment of all of her expenses, Michelle had an approximate $1200 remaining in disposable income at the end of each month. She had a pension with the state of Illinois with an estimated

eventual payout of $3300 per month, and a deferred compensation investment account with a value of $155,000.

¶ 7 Evan testified at trial that his annual gross income from all sources was approximately $108,000. He acknowledged that he listed his annual gross income as $144,000 in his May 4, 2015, financial statement. Evan explained that the income he reported in May 2015 could have been mistakenly inflated because the Air National Guard Reservist paystub he used to fill out the financial statement included compensation for one of the two reservist active training weeks each year. He also thought that the earnings amount was inflated because of a bonus he received for "sustained superior performance." In the May 2015 financial statement, Evan listed this $1168 bonus as a monthly source of income. At trial, Evan testified that he did not receive a monthly bonus, and had only received bonuses two times in his entire career. At the time of trial, Evan's annual technician salary was $94,596. Evan's annual income as an Air National Guard Reservist fluctuated between $15,000 and $18,000. Evan testified that he received $574 each month in child support, but that he had not included these funds in the May 2015 financial statement. After payment of all of his household and child-related expenses each month, he testified that he had no extra disposable income. However, in his May 2015 financial statement, Evan stated that after expenses he had $5297 in disposable income each month. Evan testified that he would qualify for a military pension at the age of 60, but that he was unaware of its current value. He also had a deferred compensation plan with a value of $368,000.

¶ 8 Evan testified that his oldest daughter had started attending college in the fall of 2015. She was awarded a scholarship. After application of her scholarship, Evan paid approximately $7085 for tuition, room and board, books, a laptop computer, and miscellaneous expenses to set up her new dormitory room for the first semester. Evan's youngest daughter also had future plans

to attend a four-year college. Evan has unused GI Bill benefits that will provide a 40% discount on tuition for eight semesters of college. Evan plans to assign these benefits to his daughters, but did not do so for his oldest daughter's first semester of college. He testified that he did not believe that the balance of her tuition bill after subtracting her scholarship award was high enough to warrant use of one of the eight available semesters of this GI Bill benefit.

¶ 9 At trial, the primary issue of disagreement was Michelle's request for monthly maintenance. Michelle wanted to be able to maintain a comparable standard of living that she and Evan enjoyed while they were married. Specifically, Michelle wanted the financial ability to purchase a home. At trial, Michelle requested an award of $2000 per month for two years. Evan testified that Michelle had sufficient income to meet her needs, and that he was unable to pay maintenance because he was still supporting his two daughters.

¶ 10 At the conclusion of the trial, the trial court noted that it was likely that Evan's May 2015 financial statement contained errors, but that there were no documents or other evidence correcting the errors. Specifically, the court stated that there was inadequate documentary evidence of the bonuses Evan received. The court questioned the logic of Evan's rationale for not utilizing the GI Bill educational benefits for his oldest daughter. The court concluded that Michelle established the need for maintenance and that her request of $2000 per month for two years was far below the statutory guidelines, and thus was a fair and reasonable award.

¶ 11 The trial court agreed with the parties' proposed property division. The court ordered that each party was to receive one-half of the marital portions of each other's pension benefits and investment funds. The court awarded Michelle one-half of the balance of attorney fees owed.

¶ 12 Evan filed a motion to reconsider, asking the court to consider evidence not available at trial—his W-2 income statements and his ex-wife's petition to abate child support filed after trial concluded. The trial court denied Evan's motion to reconsider on January 26, 2016.

¶ 13 Evan appealed. On August 1, 2017, this court vacated the November 12, 2015, judgment and remanded the case back to the trial court with directions to enter specific findings regarding its maintenance decision in compliance with section 504 of the Act. *In re Marriage of Cozadd*, 2017 IL App (5th) 160080-U, ¶ 18.

¶ 14 On remand, the trial court reconsidered the maintenance issue. In its October 27, 2017, amended judgment, the trial court found that Michelle earned $6681 in gross monthly income, and that Evan earned $11,387.25 in gross monthly income. The trial court included the child support Evan received in his gross monthly income, but excluded any bonus income. The trial court noted that Evan claimed that the child support award would be abated, but concluded that this statement was speculative and self-serving because he provided no documentary proof that the child support order had been or would be prospectively abated. After considering each of the factors listed in section 504(a) of the Act, the trial court amended its earlier maintenance award and ordered Evan to pay Michelle monthly maintenance of $546.30 for 6.6 years. The 6.6-year award was based upon the statutory calculation—multiplying the number of years of marriage by the corresponding statutory percentage. 750 ILCS 5/504(b-1)(1)(B) (West 2016). In its amended judgment, the trial court did not award Michelle attorney fees.

¶ 15 Evan timely appealed this judgment on November 27, 2017.

¶ 16 ANALYSIS

¶ 17 Evan argues that the trial court's maintenance award was improper on multiple bases. He claims that the trial court erred in the calculation of his income; that there was insufficient

evidence to establish Michelle's need for maintenance as well as Evan's ability to pay for maintenance; and that the trial court erred in not allowing him to introduce posttrial evidence on his future earning capacity, his actual 2015 earnings, and child support abatement. We will address each issue separately after a brief summary of the maintenance statutory provisions and the standard of review.

¶ 18 Maintenance Statute and Standard of Review

¶ 19 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2016)) provides that the court may "grant a maintenance award for either spouse in amounts and for periods of time as the court deems just ***." The trial court must initially decide if a maintenance award is appropriate after it considers "all relevant factors" including the 14 statutory factors contained within section 504(a) of the Act. *Id.* The 14 factors include (1) the income and property of each party including marital and nonmarital properties assigned to the party seeking maintenance as well as the financial obligations assigned to both parties; (2) each party's needs; (3) the present and future earning capacity of each party; (4) any impairment of future earning capacity due to one party devoting time to domestic duties or otherwise having foregone or delayed educational or employment opportunities; (5) any impairment of the present and 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 and training; (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, skills, liabilities, and the needs of each party; (10) all sources of public and private income including disability and retirement income; (11) the tax consequences of the property division upon the parties; (12) contributions and services by the party seeking maintenance to the education, training, or

career of the other spouse; (13) any valid agreement between the parties; and (14) and any other factor that the court finds to be just and equitable. *Id.*

¶ 20 If after the trial court conducts its evaluation and concludes that a maintenance award should be entered, the court "shall order maintenance in accordance with either paragraph (1) or (2) of this subsection ***." *Id.* § 504(b-1). Paragraph 1 is split into two parts, and an award pursuant to paragraph 1 must be consistent with the following guidelines: "the combined gross income of the parties [must be] less than $250,000 and the payor [must not have any] obligation to pay child support or maintenance or both from a prior relationship" and the award must be in accordance with subparagraphs (A) and (B), "unless the court makes a finding that the application of the guidelines would be inappropriate." *Id.* § 504(b-1)(1). Subparagraph (1)(A) requires a calculation to determine the amount of the award, with the caveat that the total of the awarded amount plus the payee's gross income cannot exceed 40% of the combined gross income of the parties. *Id.* § 504(b-1)(1)(A). Subparagraph (1)(B) requires a calculation to determine the duration of the award, multiplying the number of years the parties were married on the date the petition to dissolve the marriage was filed with a percentage specified in the statute. *Id.* § 504(b-1)(1)(B). Paragraph (2) allows the trial court to grant a maintenance award that is not in compliance with the guidelines contained within paragraph (1)(A) and (B), so long as the trial court considers the 14 relevant factors of section 504(a). *Id.* § 504(b-1)(2).

¶ 21 Whether or not the trial court enters an award of maintenance, the court must make specific findings of fact that both "state its reasoning for awarding or not awarding maintenance and shall include references to each relevant factor set forth in subsection (a)" and if the court deviates from the guidelines, must "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.* §504(b-2).

¶ 22 Whether a maintenance award is correct is within the trial court's discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). A maintenance award will not be overturned unless the trial court abused its discretion in granting the award. "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.* However, if the appellant objects to a trial court's factual finding supporting its maintenance award, we review the factual finding to determine if it is contrary to the manifest weight of the evidence. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 3, 970 N.E.2d 117 (citing *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294, 932 N.E.2d 543, 548-49 (2010)). "Findings are against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Id.*

¶ 23 Calculation of Evan's Income

¶ 24 Evan first argues that the trial court incorrectly calculated his income. In his May 4, 2015, sworn financial statement, he stated that his 2014 annual gross income was $108,669, and that his 2015 year-to-date income was $41,917. Elsewhere in this statement, Evan listed his monthly gross income for salary/wages/base pay as $11,934. This total amount excluded his claimed monthly bonus of $1168. Evan also listed his net monthly income as $9100. After subtracting his monthly living expenses, Evan listed $5297 as disposable monthly income. In his trial testimony, Evan disputed the income information he included in the sworn statement, but provided no documentary or other evidence to support his claim.

¶ 25 Overall, Evan's testimony at trial that he earned less income than reported was general in nature and unsupported by any documentary proof. More specifically, Evan argues that he incorrectly inflated his Air National Guard Reservist income on the financial statement by $2265.17 because the paystub he used included payment for one of his two required weeklong trainings. No documents or other evidence was provided to support this claim. An appellant should not be allowed to benefit on appeal when he failed to introduce evidence at trial. *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 403, 639 N.E.2d 953, 956 (1994) (citing *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54, 448 N.E.2d 545, 550 (1983)). Therefore, a reviewing court will not reverse the trial court if the appellant has failed to produce evidence when it had the ability to do so. *Id*.

¶ 26 In addition, Evan unsuccessfully attempted to inject testimony about whether he would be able to continue in his capacity as an Air National Guard Reservist until retirement, and that if he was unable to do so, this could also affect retention of his civilian job connected with the Air National Guard. We find that the trial court properly restricted Evan's attempt to interject speculation about his future income. Maintenance awards must be based upon the evidence disclosed in the record and at trial. *In re Marriage of Sisul*, 234 Ill. App. 3d 1038, 1040, 600 N.E.2d 86, 88 (1992). "The trial court must not engage in speculation as to the future condition of the parties." *Id.* (citing *In re Marriage of Hart*, 181 Ill. App. 3d 1066, 1068, 537 N.E.2d 829, 831 (1989)).

¶ 27 The trial court found that Evan's gross monthly income (including $621.83 in monthly child support but excluding periodic bonuses) was $11,387.25, and that Michelle's gross monthly income was $6681. After reviewing the trial transcript and the evidence introduced at trial, we conclude that the trial court's ultimate conclusion about Evan's income was not contrary

to the manifest weight of the evidence. *Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 21. However, we do modify the amount of Evan's gross income as outlined in the following paragraph. The trial court's decision was based upon the sworn financial statement Evan prepared and signed. Any miscalculations by Evan were not supported by documentary or other evidence. Although he testified that the amounts were wrong, he offered no proof to substantiate these claims. *Marriage of Sisul*, 234 Ill. App. 3d at 1040 (citing *Marriage of Hart*, 181 Ill. App. 3d at 1068).

¶ 28 We agree with the trial court that the child support payments Evan received should have been included in Evan's income especially because he used child-related expenses to offset his regular income in his May 2015 financial statement. Having reviewed the trial transcript, there is conflicting information about the frequency of child support payments. Evan testified that his ex-wife paid him $287 two times per month. On cross-examination, Michelle's attorney asked Evan questions premised on the receipt of a child support payment every two weeks. Based upon Evan's testimony, he received $574 in child support per month. The trial court found that Evan received $621.87 in child support each month. The $621.87 monthly amount used by the trial court is based upon payment every two weeks, instead of payment two times per month. We conclude that the only evidence about the frequency of child support payments came from Evan's testimony. Accordingly, we find that the trial court's calculation of Evan's gross monthly income was incorrect and must be reduced by $47.87 per month from $11,387.25 to $11,339.38.

¶ 29 Michelle's Need for Maintenance and Evan's Ability to Pay

¶ 30 Historically, courts have found that no one statutory factor is dispositive in a maintenance determination. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157, 621 N.E.2d 929, 934 (1993). One of the factors that must be considered by the trial court is the needs of both parties. 750

ILCS 5/504(a)(2). The trial court must consider the reasonable needs of the party seeking maintenance in view of the standard of living established during the marriage. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 773, 690 N.E.2d 1023, 1027 (1998) (quoting *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972, 605 N.E.2d 670, 676 (1992)). In January 2015, amendments to section 504 of the Act took effect modifying the rules and guidelines associated with awarding maintenance. The amendment requires use of a mathematical calculation based upon the length of the marriage as well as consideration of numerous relevant factors. Despite these changes, the trial court must still consider all of the statutory factors before awarding maintenance including the parties' circumstances, the standard of living established during the marriage, and the duration of the marriage. 750 ILCS 5/504(a). Additionally, a party does not necessarily have to sell or impair assets awarded in a property distribution in order to maintain herself in the manner established during marriage. *In re Marriage of Ryman*, 172 Ill. App. 3d 599, 611, 527 N.E.2d 18, 25 (1988). The goal of being financially independent "must be balanced against a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage." (Internal quotation marks omitted.) *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 828, 597 N.E.2d 847, 863 (1992).

¶ 31 In this case, Michelle asked for maintenance because she wanted the security of owning a home, but would not be able to do so without depleting assets awarded in the court's property division. During the marriage, she and Evan purchased a marital home in O'Fallon that was worth approximately $245,000 on the date of trial. She testified to the attributes of this particular house, and to her aspirations of owning a home after the dissolution was finalized. Upon separating from Evan, Michelle moved out of the home and into an apartment. The parties were

not in dispute that Evan should receive the marital home and its associated debt as part of his property settlement. Considering all of the relevant statutory factors, including the standard of living established during the marriage, the trial court concluded that Michelle established the requisite need for maintenance.

¶ 32 Turning to Evan's ability to pay maintenance, the trial court concluded that Evan's disposable income each month was $5297. We find that Evan's disposable monthly income would have been $574 higher because Evan did not include the monthly child support as income in his May 2015 financial statement.

¶ 33 Evan argues that he cannot afford to pay maintenance because of his daughter's college expenses. However, Evan produced no evidence to support this claim. Additionally, although Evan claimed that his wife had discontinued paying child support and would likely seek court-ordered abatement, he produced no evidence to support this claim. Evan cannot make arguments on appeal that were unsupported by evidence at trial on the issues of his daughter's college expenses and/or his ex-wife's planned abatement of her child support obligation. *Marriage of Albrecht*, 266 Ill. App. 3d at 403 (citing *Marriage of Smith*, 114 Ill. App. 3d at 54). Finally, Evan claims that the trial court should have allowed him to testify about the concerns he had about his ability to remain in the Air National Guard Reserves until retirement, a factor that could also impair his ability to maintain his civilian job. As stated earlier in this order, the trial court properly rejected this speculative testimony, as it would require the trial court to improperly speculate about future conditions. *Marriage of Sisul*, 234 Ill. App. 3d at 1040 (citing *Marriage of Hart*, 181 Ill. App. 3d at 1068).

¶ 34 Disallowing Evidence After Trial

¶ 35 Evan next claims that the trial court incorrectly denied his motion to reconsider the original judgment. The original judgment was appealed to this court, and was vacated and remanded by our order on August 1, 2017. *Marriage of Cozadd*, 2017 IL App (5th) 160080-U, ¶ 18. This motion to reconsider was called for hearing on January 26, 2016, and the trial court denied the motion on that same date. In denying his motion to reconsider, the court disallowed Evan's attempts to provide evidence of his 2015 income, his future earning capacity, and child support abatement.

¶ 36 The trial court's ruling on the admissibility of evidence will not be reversed unless the trial court abused its discretion. *People v. Reese*, 2017 IL 120011, ¶ 75, 102 N.E.3d 126.

¶ 37 Evan timely filed his notice of appeal in St. Clair County circuit court on November 27, 2017. That notice states that he appeals from the trial court's amended judgment of dissolution of marriage entered on October 27, 2017. No other orders are listed in the notice of appeal.

¶ 38 Illinois Supreme Court Rule 303(b)(2) states that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017). A notice of appeal is designed to notify the opposing party that the appealing party seeks review of the trial court's judgment. *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 23, 43 N.E.3d 546 (quoting *People v. Patrick*, 2011 IL 111666, ¶ 20, 960 N.E.2d 1114). As a result, "the notice [of appeal] confers jurisdiction on the reviewing court to consider only the judgments or pertinent parts specified therein." *Id.* "While the notice must be specific as to the judgments being submitted for review, we note, however that '[t]he notice of appeal should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly

and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " *Id.* ¶ 24 (quoting *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176, 950 N.E.2d 1136, 1144 (2011)). If the appellant's failure to strictly comply with Rule 303 is a matter of form rather than of substance, then the appellee will not be prejudiced. *Id.*

¶ 39 Here, we find that the deficiency in Evan's notice of appeal is a matter of substance and not merely of form because he is now attempting to appeal an additional order that is not included in his notice of appeal. As our jurisdiction only extends to those judgments specifically listed in the notice of appeal, we do not have jurisdiction to respond to Evan's arguments that the trial court erred in denying his motion to reconsider on January 26, 2016. *JP Morgan Chase Bank, N.A.*, 2015 IL App (1st) 140428, ¶ 23.

¶ 40 To the extent that Evan's motion to reconsider the original judgment of dissolution was a step in the procedural progress leading to the amended judgment of dissolution, we find that the trial court properly disallowed Evan's proffer of evidence after trial and his speculation as to his future earning capacity. See *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 432-36, 394 N.E.2d 380, 382-84 (1979) (where the supreme court held that notice of appeal from a final judgment was sufficient to confer jurisdiction upon the reviewing court to review an earlier order that the judgment was based upon). Evan had ample opportunity to present corrected evidence of his income at trial. He was aware that Michelle was asking the court to award maintenance. He provided a sworn financial statement in May 2015. At any date before trial, Evan had the ability to amend that statement or otherwise prepare adequate evidence of his income through November 2015 for presentation at trial. He did not do so. As stated earlier in this order, an appellant should not be allowed to benefit on appeal when he did not introduce evidence at trial.

Marriage of Albrecht, 266 Ill. App. 3d at 403 (citing *Marriage of Smith*, 114 Ill. App. 3d at 54). Furthermore, Evan's claim that child support had or would soon be abated and his claim that his future earning potential was possibly limited were speculative. A trial court must base its award of maintenance on the circumstances disclosed in evidence at the time of trial. *Marriage of Sisul*, 234 Ill. App. 3d at 1040 (citing *Marriage of Hart*, 181 Ill. App. 3d at 1068). Furthermore, a trial court must not engage in speculation as to the future condition of the parties. *Id.*; *In re Marriage of Campise*, 115 Ill. App. 3d 610, 614, 450 N.E.2d 1333, 1336 (1983).

¶ 41 Maintenance Order

¶ 42 From our review of the trial court's amended judgment and the record and arguments on appeal, we find that the trial court adequately considered and analyzed all 14 factors included in section 504(a) of the Act and made specific findings of facts and included its reasoning on each of those factors as mandated by section 504(b-2) of the Act. 750 ILCS 5/504(a), (b-2). We find no basis to conclude that the trial court abused its discretion in finding that Michelle was entitled to an award of maintenance. The trial court carefully followed the requirements of section 504 of the Act in determining that Michelle had a valid need for maintenance; that Evan had the ability to pay maintenance; and that overall, a maintenance award was appropriate.

¶ 43 As stated earlier, we find that the amount of child support included in Evan's monthly income was slightly elevated, and so the calculated monthly maintenance amount is incorrect. Pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), an appellate court has the ability to "enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief *** that the case may require." Therefore, we will recalculate the monthly maintenance and modify the judgment.

¶ 44 Pursuant to section 504(b-1)(1)(A) of the Act, we must calculate percentages of both Evan's and Michelle's gross annual income. 750 ILCS 5/504(b-1)(1)(A). The trial court concluded that Evan's gross annual income was $136,072.56 and Michelle's gross annual income was $80,172. The amount of maintenance awarded, when added to Michelle's gross annual income, cannot exceed 40% of their combined gross annual incomes. Their combined gross annual income was $216,244.56, and 40% of that total is $86,497.82. The maintenance amount is calculated by determining 30% of the payor's gross annual income and then subtracting 20% of the payee's gross annual income. Using that mathematical formula, the maintenance award would be $24,787.373 after subtracting 20% of Michelle's gross annual income ($16,034.40) from 30% of Evan's gross annual income ($40,821.77). Adding the maintenance amount of $24,787.37 to Michelle's annual gross income of $80,172, the total is $104,959.37, which exceeds 40% of the combined annual gross income—$86,497.82. Therefore, that potential maintenance amount is too high. 750 ILCS 5/504(b-1)(1)(A). The trial court here ordered monthly maintenance of $546.30—$6555.60 annually. Adding $6555.60 to Michelle's gross annual income, the total is $86,727.60, which also exceeds 40% of the combined annual gross income by $229.78. Therefore, the total amount of annual maintenance must be reduced from $6555.60 to $6325.82 in order to comply with the 40% maximum. We modify the monthly maintenance amount to $527.15.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we affirm the St. Clair County circuit court's judgment awarding maintenance to Michelle. Pursuant to Illinois Supreme Court Rule 366(a)(5), we modify the monthly maintenance awarded to $527.15.

¶ 47 Affirmed; judgment modified.