2019 IL App (1st) 171563-U

THIRD DIVISION
January 29, 2019

Nos. 1-17-1563 & 1-17-2327

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
FIRST JUDICIAL DISTRICT

In re THE MARRIAGE OF	)	
	)	Appeal from the
DEBRA CAMINITI,	)	Circuit Court of
	)	Cook County
Petitioner-Appellant,	)	
	)	06 D 1504
and	)	
	)	Honorable
JOSEPH CAMINITI,	)	Timothy P. Murphy
	)	Judge Presiding
Respondent-Appellee.	)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court did not abuse its discretion when it terminated maintenance retroactively and ordered appellant to repay excess maintenance. Trial court did not abuse discretion by denying petition for attorney's fees.

¶ 2 As part of their divorce, the circuit court ordered Joseph Caminiti (Joe) to pay Debra Caminiti (Debra) maintenance, reviewable after 60 months. Around the 60-month mark, each filed a petition: Joe to terminate maintenance, Debra to continue it. After an evidentiary hearing, the circuit court terminated Debra's maintenance "nunc pro tunc" to October 27, 2013, roughly the 60-month mark. The court ordered her to repay all the maintenance she received after that termination date.

¶ 3 Debra also sought attorney's fees pursuant to section 508 of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/1, *et seq.* (the Act). The court determined that Debra had the ability to pay her own attorney's fees and denied the section 508 petition.

¶ 4 Debra appeals the trial court's orders terminating maintenance, requiring her to repay maintenance, and denying her petition for fees. For the following reasons, we affirm each decision.

¶ 5 BACKGROUND

¶ 6 After a 26-year marriage, the circuit court dissolved Debra and Joe's marriage on October 20, 2008. At the time of their divorce, the couple's marital estate was valued at more than six million dollars. The judgment for dissolution of marriage divided the estate about equally.

¶ 7 Debra received three residential properties, various investment and retirement accounts, a number of motor vehicles, and $311,000 in cash, to be paid in ten equal installments over five years. Joe's portion of the estate related almost solely to his company. He received his business, three commercial properties which were used for his business, a residential property, a vacant parcel of land in Colorado, and a Jeep. In addition to the obligation to pay Debra $311,000, he also had to satisfy a $134,000 mortgage on one of the properties distributed to her.

¶ 8 The court determined that Debra was entitled to rehabilitative maintenance. The dissolution judgment order read:

> "Petitioner, Debra Caminiti, is entitled to maintenance in the amount of Nine Thousand ($9000.00) Dollars on a monthly basis taxable to Mrs. Caminiti and deductible by Mr. Caminiti.
>
> The Court believes that Mrs. Caminiti is presently in a position to be earning in the range of Forty Thousand ($40,000.00) Dollars on a yearly basis, should be able to

earn more in the future and will receive significant assets in this case to allow her to have passive income to pay her necessary expenses. The maintenance hereunder shall be reviewable in sixty (60) months from the date of this Judgment."

¶ 9 Over the next five years, there were a few bumps in the road regarding Joe's obligations to Debra. For example, in 2011, the circuit court held Joe in contempt for failing to make full maintenance and property payments. Joe ultimately paid the full amount ordered by the judgment for dissolution of marriage.

¶ 10 In anticipation of the 60-month review date, in September 2013, Joe filed a petition to terminate maintenance. A mother later, Debra filed her counterpetition to extend maintenance. On October 24, 2013, Joe filed an amended petition to terminate.

¶ 11 On January 10, 2014, in the interim, the court ordered that "the prior order of maintenance in the amount of Nine Thousand Dollars ($9,000) per month remains in full force and effect subject to these proceedings and including any off-sets as directed by the court upon the ruling on the pending petitions."

¶ 12 Later in 2014, the court began the evidentiary hearing on the parties' cross-petitions. Four witnesses testified at the hearing: Debra, Joe, Eugene Filipski, and Jennifer Jeffs.

¶ 13 Debra Caminiti

¶ 14 Debra testified that she and Joe were married in 1982, while she was in college working towards a degree in pharmacy. In 1986, she passed her pharmacy boards and began working 40 hours a week as a pharmacist for Walgreens. From 1989 to 1998, Debra worked 30 hours a week—which is considered full-time—doing overnight shifts as a pharmacist. In 1998, she reduced her workload to two or three days a week. Around 2000, she began working for Joe at his company. While still working for Joe, she further reduced her hours as a pharmacist to one

day a week. Debra specifically kept working one day a week at Walgreens so she could keep her pharmacist license.

¶ 15 Although she has worked at Walgreens continuously since 1986, she is not a permanent full-time pharmacist. She described herself as a "floater." She receives floater shifts by requesting them through an internal system with Walgreens. Typically, shifts are posted two weeks in advance. Her work flow is coordinated with her "market scheduler," Celeste, who helps multiple floaters put in shift requests. When a request is accepted, the floater (in this case Debra), will get assigned the shift at an hourly rate. There are exceptions to this assignment rule. For example, if someone unexpectedly calls off, Celeste will contact her floaters to see who is available immediately.

¶ 16 Not surprisingly, Walgreens employs permanent pharmacists. To get a permanent position, a floater must place bids. This bidding procedure is mandated by union contract, even though Debra is not a member of the union. Each October, floaters are allowed to bid on up to 12 stores where they would like to be considered for a permanent postition. If there is an available position at one of those stores during the next year, that location must first consider the three most senior employees seeking the spot. Debra has 26 years of seniority and is one of the most senior employees with the company, though not the most senior.

¶ 17 Debra recognized she had an obligation to try to become self-sufficient. But since the divorce she has not consistently bid on permanent positions. In 2008, the year of the divorce, Debra did not bid on any full-time positions. In 2009, she bid on one store, even though there were 48 stores between her home and the store she bid on. She did not bid for any stores in 2010, and did not make any attempt to get full-time employment at companies other than Walgreens.

¶ 18 In 2011 and 2012, Debra received four-month floater shifts to cover pharmacists on extended leave: one on disability leave (2011) and one on maternity leave (2012). As such, her income rose from $22,000 in 2010 to $65,000 in 2010. Although she saw an increase in work, she was still a floater and did not bid on any full-time positions. By 2012, her income had risen to $85,000, and she still did not bid. In 2013, the year of the maintenance review, her income dropped to $73,000, and she bid at only four stores. Debra said she only chose four stores because those were the locations that interested her. She explained that it is hard to bid on stores where you have never worked. In 2014, Debra bid the maximum 12 stores but, as of the hearing, had not received a position. In addition to the bids, in 2014, Debra applied at four companies other than Walgreens, including CVS, Walmart, and Costco (she couldn't remember the fourth).

¶ 19 At the time of the hearing, Debra earned $67.00 an hour as a floater. She also has stock benefits and a Walgreens profit-sharing retirement account. Walgreens offers insurance to employees that maintain a minimum 30 hours a week. Debra explained that she keeps private insurance because she cannot guarantee she will get 30 hours a week.

¶ 20 While Debra has been employed, to some degree, by Walgreens for 26 years, she also received income and worked for Joe and his company. Joe opened Caminiti & Associates, Inc. (CAI) around 1990. When Joe opened CAI, Debra drew a paycheck from the company, even though she did not actually work there. For about five years, starting in 2000, Debra actually worked for Joe. She continued working every Monday at Walgreens but would spend the rest of the week working for CAI.

¶ 21 In addition to her employment, Debra owns Weiss Properties, Inc (Weiss) with her nephew—each owns 50 percent. Weiss owns approximately 85 acres of undeveloped land in North Carolina. Weiss is holding the land with the hopes of subdividing and developing it. Debra

also testified about various checking accounts, at least one IRA, and a Fidelity account that she allows her broker to manage.

¶ 22 As noted above, Debra received three residences in the divorce. She testified about home expenses: repairs, mortgages, etc. While Debra's pre-trial disclosures included various monthly expenses, she admitted that these "monthly" expenses were averaged out based on the work she had done in the recent past. Debra's petition claimed she has not been able to sell her properties and that she could not keep them up without maintenance. On cross, she admitted that she has not even attempted to sell her properties, and that the expenses were not likely to repeat. Debra has not tried leasing any of these homes for additional income, though there was some evidence suggesting that she and Joe had done so previously.

¶ 23 Debra testified about a number of medical problems. She explained that she has back, neck, and foot pain from standing for long hours as a pharmacist. She also has arthritis in one of her hands from consistently opening pill bottles. To combat these pains, she sees a chiropractor on a regular basis for her neck and back and has had surgery on each foot. She also takes over the counter pain medication and gets injections in her back. Additionally, she sees a dermatologist every six months because of prior melanomas. Fortunately, these melanomas have been removed, and she has not had another one since. These physical problems do not prevent her from working or doing things that she likes, such as riding her motorcycle, using her wave runners, or driving long distances, but she does experience pain during these activities.

¶ 24 Joseph Caminiti

¶ 25 At the time of the hearing, Joseph was engaged to Jennifer Jeffs (his brief on appeal represents that they are now married). Joseph lives with Jennifer and her daughter, Kailey, in the home he received in the divorce.

¶ 26 Joseph started CAI in the 1990s. He is, and has been, its sole officer and shareholder. CAI is a network of furniture wholesale distributors that markets furniture for various manufacturers; the company does not itself manufacture any furniture. There are two aspects to CAI's business: showroom and road sales. The showrooms are brick-and-mortar locations that showcase furniture available for purchase. CAI currently has three showrooms: Merchandise Mart in Chicago, the Arlington Design Center, and the Denver Design Center. Of these three, Joe personally owns the Arlington Design Center, which consists of three buildings in Arlington Heights. While these commercial properties are used for the business, they are owned by Joe in his individual capacity. Since the divorce, Joe has actively tried expanding his business and the products available. For example, he recently purchased a lighting fixture distribution company.

¶ 27 Proof of CAI's, and thus Joe's, income and accounting practices was a significant portion of the evidence submitted to the court. Of particular importance was the company's "due to officer" or "officer loan" account, listing personal expenses CAI paid for Joe. Testimony and documents regarding this account were confused and inconsistent. Based on the evidence, the trial court determined that CAI "utilize[d] some rather interesting methods" for this account.

¶ 28 In 2007, CAI had income of $10,940,000. From this, the tax documents show that the "payments to officers" was $352,661. Joe indicated that he paid excess income to officers—himself—to "zero out" and avoid a double taxation problem, *i.e.*, taxation as both corporate and personal income. As of 2007, the officer account showed $148,902 was due to Joe. In 2008, CAI had income of $10,0780,640, the payments to officers were $292,800, and the amount due to officers had risen to $358,854.

¶ 29 Like many other companies, CAI suffered a downturn in 2009. Its income fell to $7,404,000 and had an immediate impact on the company. First, Joe cut his income from

approximately $300,000 in prior years to $128,696. CAI was also required to cut salaries across the board and reduce its workforce by approximately 25 percent. Joe testified that the economic depression had a rippling effect on his personal finances as well. This decline was the reason he ultimately fell behind on his maintenance and property settlement obligations. Joe also defaulted on the mortgage of one of the three Arlington Design Center buildings. The bank filed to foreclose on the defaulted mortgage, but the parties later entered into a deferment and repayment agreement which re-collateralized the loan with all three buildings. Beginning in 2009, Joe was also forced to begin borrowing against the "due to officers" account.

¶ 30 In addition to the business cuts, CAI also received support from its biggest supplier, Kavet. Because of its ongoing business relationship with Joe, Kavet loaned CAI a significant amount of money to pay business expenses associated with the showroom where Kavet products were featured. Kavet agreed to float this money and allow CAI to repay it once sales picked up again.

¶ 31 In 2010, CAI's income rebounded slightly to $8,432,000. But Joe's personal income dropped to $113,345. His income was still down from the pre-recession amount because of the difficult prior years. Due to the apparent turnaround, Kavet agreed to forgive part of the loan and CAI began to repay Kavet. In 2011, CAI's income again increased to $9,520,000. Kavet forgave more of the loan, but CAI still owed approximately $800,000. The next year, 2012, CAI's income finally surpassed the pre-recession numbers, increasing to $11,056,000. Although CAI appeared have recovered, Joe's personal income remained relatively level at $122,345. Joe explained that he did not raise his own salary yet because of the ongoing issues with the bank and the foreclosure on the Arlington Design Center building. By the end of 2012, the officer account showed that Joe owed CAI $995,483.

¶ 32 In 2013, CAI's income increased to $12,310,644. The amount Joe owed to CAI peaked to $1,108,321. For the first time since the divorce, Joe's personal income increased to near pre-divorce levels: $322,375. He explained that his normal salary was still $122,345. The other $200,000 was issued as a bonus. He paid taxes on the bonus and used the remainder to repay obligations, most notably repaying $153,498 of what he owed CAI. He decided to keep his salary lower, and pay out a year-end bonus, to reduce the company's expenditures on paper. Likewise, in 2014 Joe kept his salary low, but paid himself a $350,000 bonus. Joe used this bonus to pay taxes and pay down his debt to CAI.

¶ 33 Although Joe borrowed heavily from CAI, it was not enough to cover personal expenses. To help him get out of this "mess," Joe sold off the ten acres of land in Colorado he received as part of the divorce. He also borrowed approximately $300,000 from his mother to help cover expenses during the recession, specifically expenses related to the Arlington Design Center. The testimony on this loan is unclear, though it appears he sold some real estate for his mother and then borrowed the proceeds. To pay back this loan, CAI pays Joe's mother $1,400 per month.

¶ 34 In addition to the money he borrowed from his mother and CAI, the evidence showed that CAI pays a significant amount of Joe's personal expenses. These personal expenses include: property taxes, food, clothing, medical expenses, attorney fees, maintenance to Debra, vacations, dining out, entertainment, credit card bills, etc. Joe conceded that *some* of these were personal, but he claimed that he does pay his own personal expenses. When asked for proof of that claim, Joe repeatedly said he couldn't point to a single instance where he paid for certain expenses because "[he didn't] have the documents in front of [him]."

¶ 35 In addition to his commercial interests, Joe has various smaller assets and obligations: a checking account, a college fund he set up for Kailey (his stepdaughter), a 401k worth about $18,000, and, at the time, he owed about $40,000 in attorney's fees.

¶ 36 Jennifer Jeffs

¶ 37 Jennifer was Joe's fiancée at the time of the hearing and is now his wife. Since before the two were a couple, Jennifer has been working at CAI. Currently she works on CAI's marketing and runs a photography business out of the home she shares with Joe. She draws a salary from CAI and receives health insurance, a cell phone, a Lexus, and access to CAI's corporate credit cards for business purposes.

¶ 38 Joe often takes her on vacations when he travels for work. The couple has traveled to Italy, Napa Valley, Las Vegas, and Mexico, to name a few. Jennifer does not work on these trips, but she said that Joe always spends time working; he works "every" vacation. She has never paid for travel or accommodations, though she believes she "may have" personally paid for some dining and entertainment.

¶ 39 Eugene Filipski

¶ 40 Eugene testified that he is an accountant who does work for Joe, personally, and for CAI. Eugene is no longer a CPA, but was at one time.

¶ 41 He confirmed that CAI does, in fact, pay some of Joe's personal expenses, but he testified that when personal expenses are identified, they are charged back to the amount Joe owes the company. These expenses were only included in Joe's debt if Eugene personally recognized the charge as a personal expense. He and Joe do not sit down to discuss charges or determine whether they are personal or business-related. When questioned about whether certain charges were personal, Eugene said he didn't know. He tried to explain how they could be business-

related. For example, he wouldn't have flagged a charge at Hair Club for Men because he believed it could have been a legitimate medical expense. He confirmed that the company has multiple credit cards, which are sometimes used by others, but are mostly used by Joe.

¶ 42 According to Eugene, the officer account was started back in 2002. The account was originally started as a "due to officers" account to distribute excess income to Joe, but as the business declined the same account was eventually converted to a loan account. Eugene did not rename the account and whether it's a "due to" or loan account depends on the balance.

¶ 43 Eugene's testimony about the account was contradictory. At one point he said an approximately $600,000 balance was due from Joe, but then later said that amount was due *to* Joe, a significant swing. Ultimately, Eugene testified that as of January 1, 2010, the account showed that $609,201 was due to Joe. But, around 2012 there was a tipping point where the account went from "due to" to loan. As of September 2014, Joe owed the company $225,599.68. While Eugene has worked for CAI, Joe has not signed a note for his loans.

¶ 44 <u>Court's Maintenance Ruling</u>

¶ 45 After the evidentiary hearing, the court issued a written memorandum opinion. In its order, the court thoroughly discussed all of the evidence presented and analyzed, in detail, each factor listed in the Act. For the sake of brevity, we only summarize the court's findings with respect to the factors at issue on appeal.

¶ 46 *Duration of the Parties' Marriage*

¶ 47 The court appreciated that, while the parties were married for more than 25 years, Debra only received 5 years of maintenance. The court dismissed Joe's argument that Debra had actually received " 'almost 8 years of maintenance' " because Joe "has not made any maintenance payments pursuant to this court's January 10, 2014 Order."

¶ 48 *The Parties' Income / Earning Capacity*

¶ 49 The court specifically found that Debra did not make a good-faith effort to seek full-time employment. The court believed that Debra was able to earn $67 per hour but had not been working full time. If she had, she "would earn the gross amount of One Hundred, Thirty-Four Thousand dollars ($134,000.00) if she worked a 2000 hour work year."

¶ 50 The court was cautious in determining Joe's income. In the dissolution judgment, it was determined that Joe had an "Adjusted Gross Income of $317,814.00." On review, the court determined that "at least on paper, JOSEPH's income appears to have declined, although his full access to monies to pay his personal and living expenses is not clearly established due to the vagaries of the IRS Regulations and the allowable expenses attributable to the businesses but essentially paid on JOSEPH's behalf." The court then went on to discuss a few examples and concluded "nevertheless, the totality of the evidence indicates that JOSEPH's income is *no higher* than that at the time of the dissolution of the marriage."

¶ 51 The court recognized that Joe's income was almost completely tied to CAI. It stated

> "that the evidence produced by JOSEPH is credible and convincing that there are present, serious financial issues that must be addressed (including the previously described foreclosure proceedings) by CAI to enable it to continue doing business in the normal fashion. That it is clear that a loss of any of the Arlington properties to foreclosure would seriously impact the ability of CAI to conduct its business, and accordingly affect JOSEPH's income."

¶ 52 The court also noted that the parties may have leased some of its property in the past. But since the divorce, "the testimony and evidence is clear that DEBRA does not, and has not rented

out either of the vacation properties awarded to her (Powers Lake, Wisconsin or Evergreen, Colorado)."

¶ 53 *Standard of Living*

¶ 54 To the court, it was "clear that the parties enjoyed a high standard of living during the marriage." In its opinion, Debra "has continued to enjoy such a standard of living, if not higher," in the years following the divorce, given the assets awarded, the assets Joe paid off, her increased income, and the maintenance payments. The court found that, while Joe "certainly enjoys a comfortable standard of living," he has not enjoyed the same standard of living as he did during the marriage.

¶ 55 *Age and Condition of the Parties*

¶ 56 The court found that, while Debra testified to certain physical ailments, she "did not introduce any independent medical records or evidence in support thereof." The court did not believe that Debra's conditions impaired her ability to work and produce greater income. The court believed "both parties are of generally good health, and neither presented any testimony or evidence of either any physical limitations or of any emotional conditions."

¶ 57 *Contribution by the Party Seeking Maintenance*

¶ 58 The court found "this factor is not applicable to these post-decree proceedings."

¶ 59 *The Parties' Assets*

¶ 60 The trial court made "particular note of DEBRA's failure to fully list and disclose all of her assets as required by [Local Rule] 13.3.1." The court determined that Debra had an interest in a number of retirement accounts totaling more than $300,000. Of the accounts she received in the divorce, the Court was unable to determine the value of her Walgreens stock account because, though she testified that she "sold 'some' of Walgreen's stock as part of her investment

in WEISS PROPERTIES, INC," she did not testify how much she sold or the amounts realized from the sale. The court found that Debra owned a 50 percent interest in Weiss, and the land the company owned—its sole asset—was worth $1,110,757.00.

¶ 61 The court also criticized Joe's disclosures, "although he did attach a schedule entitled 'ASSET/LIABILITIES' with specific financial details of assets by category." As for Joe, the court found that he had continued to run and grow CAI. Further, the court noted that Joe had sold the 10-acre land in Colorado and had to re-collateralize his loan on one of the Arlington Design Center buildings to halt foreclosure.

¶ 62 *Court's Conclusion*

¶ 63 The court made specific credibility determinations and thorough findings regarding the evidence presented. Its ultimate conclusion was

> "that DEBRA is capable of meeting her monthly needs, but has elected to remain employed on a part-time basis, and has chosen not to generate income from either of the Wisconsin or Colorado vacation homes despite their episodic use by her. That the court is also mindful of her curious investment in WEISS PROPERTIES, in that the evidence shows that DEBRA pays the sum of $4,000 per month to WEISS *** which is not included or listed in her Rule 13.3.1, leading the court to conclude that DEBRA has income available to her to make such payment yet seeks an extension of maintenance that would effectively require JOSEPH to contribute to her living expenses while she voluntarily elects to invest in a post-dissolution asset.
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> ***
>
> [W]hile DEBRA did increase her earnings beginning in the year 2011, she has failed to meet her good faith obligation to become self-sufficient under Illinois case law, and

under Judge Carr's Judgment, in that she made no efforts to become employed on a full-time basis until the year 2013, being the last year of the five-year maintenance, not just at the expiration thereof.

That after considering all of the factors in 750 ILCS 5/510(a-5), all of the factors in 750 ILCS 5/504, Illinois case law, and the evidence and testimony in this case, the court does find that maintenance in this matter should terminate."

¶ 64 The court denied Debra's petition to continue maintenance and granted Joe's petition "nunc pro tunc to October 27, 2013."

¶ 65 Remaining Orders on Appeal

¶ 66 In addition to terminating maintenance "nunc pro tunc" to October 24, the court also denied Debra's petition for fees. The court once again analyzed each factor in detail. It denied her petition because it believed that, in part due to her failure to disclose assets, Debra "has the ability to pay the totality of her attorneys' fees incurred in the action." Further, it granted Joe's petition for repayment and ordered Debra to repay $162,000 in maintenance received after the termination date of October 27, 2013.

¶ 67 ANALYSIS

¶ 68 On appeal, Debra challenges the court's decision to terminate maintenance, deny attorney's fees, and terminate maintenance "nunc pro tunc."

¶ 69 I. Termination of Maintenance

¶ 70 "A trial court's decision to modify maintenance upon conducting a review of maintenance will not be disturbed absent a clear abuse of discretion." *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). We will find an abuse of discretion only if the court's ruling is so arbitrary or unreasonable that no reasonable person would adopt the court's view. *Id.*; *People v. Hall,* 195 Ill.

3d 1, 20 (2000). The court's factual findings will not be reversed unless they are against the manifest weight of the evidence—that is, if the opposite conclusion is clearly evident. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 3.

¶ 71 In conducting a scheduled review of maintenance (as opposed to one precipitated by the parties due to a substantial change in circumstances), the court considers the factors in section 504(a) and 510(a-5) of the Act. *Blum*, 235 Ill. 2d at 36; *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 24; see 750 ILCS 5/504(a), 510(a-5) (West 2014). No single factor is determinative, and the court is not required to weigh each factor equally, so long as its overall balancing is reasonable. *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 84.[1]

¶ 72 *Duration of the Parties' Marriage*

¶ 73 The court is required to consider "the duration of the marriage." 750 ILCS 504(a)(7) (West 2015). The new, inapplicable, provisions of the Act provide that "for a marriage of 20 or more years, the court, in its discretion, shall order maintenance for a period equal to the length of the marriage or for an indefinite term." 750 ILCS 504(b-1)(1)(B) (West 2018).

¶ 74 Debra argues that, while this provision is inapplicable, it leads to the conclusion that the legislature never intended for five years of maintenance after a 26-year marriage to be sufficient. For this proposition, she cites two cases: *In re Marriage of Johnson*, 2016 IL App (5th) 140479 and *In re Marriage of Blume*, 2016 IL App (3d) 140276. In these cases, the courts supported their decisions by comparing the maintenance decision with what *would* have been decided under the new guidelines. See *Marriage of Johnson*, 2016 IL App (5th) 140479, ¶¶ 108-10

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[1] In 2015, the legislature overhauled the Act. In particular, as we will discuss, it added provisions for calculating maintenance based on the length of the marriage. See 750 ILCS 5/504 (West 2016). The parties conceded in the trial court, and the court found, that these new maintenance provisions do not apply, and neither contends otherwise on appeal.

(determination that 2½ years of maintenance was insufficient was supported by fact that new guidelines would mandate 29 years of maintenance at almost double amount awarded); *Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 54 (finding that monthly maintenance award of $2000 was not excessive, as current guidelines would mandate award of $2,447 for 12 years).

¶ 75 It is important to note what these cases do and don't say. Neither of them requires this court to consider what would have been granted under the new guidelines. In each situation, the court only used the new guidelines as *further* support for their respective decision. Neither court, at least explicitly, made its initial determination based on the new guidelines.

¶ 76 That said, we acknowledge that the circuit court's rehabilitative maintenance award, reviewable after 60 months, is significantly shorter than what current guidelines would mandate, But we do not feel compelled to find an abuse of discretion based on this fact alone. We will, however, keep this argument in mind as we determine whether the court's overall balancing was reasonable. See *Marriage of Patel*, 2016 IL App (5th) 140479, ¶ 84.

¶ 77 *The Parties' Income*

¶ 78 The Act requires the court to consider "the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance" (750 ILCS 5/504(a)(1)) (West 2016)) and "the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought." 750 ILCS 5/510(a-5)(7) (West 2016).

¶ 79 The trial court determined that Joe's income was "no higher than that at the time of dissolution of the marriage." Debra cites error in this finding; she says the court failed to consider all of Joe's "income." She says Joe's "income" should include not only his monthly

wages and the two bonuses, as indicated by his W-2s, but also money that CAI paid for Joe's personal expenses. She claims the trial court erred by only considering his W-2 wages.

¶ 80 It is not nearly so simple as that. At a minimum, we can say with confidence that the trial court considered all of this information. The court, in rather intimate detail, discussed Joe's monthly wages and bonuses, the officer-loan account, and the personal expenses paid by CAI on Joe's behalf, along with rents from his commercial properties. The court recognized that, "at least on paper," Joe's income had gone down. We take the trial court's reference to "on paper" as referring to Joe's wages per his W-2s, and to that extent, the trial court was certainly correct. Compared to his 2008, pre-divorce income of $344,814, Joe's W-2 wages dropped precipitously over the next several years—$131,133 in 2009; $113,345 in 2010; $115,595 in 2011; and $122,345 in 2012. (They went back up in 2013 and 2014; more on that later.)

¶ 81 But contrary to Debra's characterization, the trial court did not stop there. The trial court fully recognized that Joe used his company, CAI, to pay a great deal of his personal expenses—to the tune of anywhere from $200,000 a year to nearly $300,000 over those years. The numbers break down as follows:

YEAR	WAGES/BONUSES	EXPENSES PAID BY CAI	TOTAL
2009	$131,133	N/A	$131,133
2010	$113,345	$201,077	$314,058
2011	$115,595	$257,463	$373,058
2012	$122,345	$298,448	$420,793
2013	$308,845	$214,717	$537,062
2014	$472,345	$176,447	$648,792

¶ 82 Debra says that every single dollar of those expenses were "personal" expenses for Joe—things like property-tax payments on Joe's home, vacations, car payments for personal use, and many divorce-related expenses such as maintenance payments to Debra, divorce attorneys' fees, and other payments to effectuate the division of property between the spouses. (Joe, for his part, admits in his brief that 70 percent of those payments went to these divorce-related expenses alone—$805,937.80 of the total $1,152,994.49 in expenses that CAI paid on Joe's behalf.)

¶ 83 Debra thus concludes that the payment of those personal expenses should be counted as "income" to Joe, on the theory that having his company pay those expenses directly is no different than if Joe received that money in wages from the company and paid the expenses himself. Joe, on the other hand, says that he treated those company payments of his expenses as *loans to be repaid*, which is why he had the officer-loan account—to memorialize what he owed back to CAI. He further claims that, in fact, he has begun to repay those loans with bonuses he received in 2013 and 2014 (thus explaining the far higher income numbers for those years). If they were loans subject to repayment, he says, then they should not count as income.

¶ 84 At least on that last point, Joe is correct. We have generally considered loans *not* to be income, because they typically require repayment. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 52 (2008); *In re Marriage of Tegeler,* 365 Ill. App. 3d 448, 458-59 (2006). It would be absurd to suggest, for example, that a home mortgage—the lending of money to buy real property that requires repayment—is income. *Marriage of Baumgartner*, 384 Ill. App. 3d at 52. Nor would we consider a line-of-credit to a farmer to be "income," as the farmer uses that money to run his business and must repay it. *Marriage of Tegeler,* 365 Ill. App. 3d at 458. The same could be said of student loans, as students are required to repay the advance of money to pay for their education. *Id.*; *Marriage of Baumgartner*, 384 Ill. App. 3d at 52.

¶ 85 On the other hand, a loan that is not a "true" loan, because it does not require repayment, is more typically considered a "gift" and thus qualifies as "income." *Marriage of Rogers*, 213 Ill. 2d at 137, 140 ("loans" of money for which repayment was never contemplated were "loans in name only" and were more properly classified as gifts and thus income). We have consistently emphasized that the requirement of repayment is of predominant importance in determining whether a loan is "income." See *Marriage of Baumgartner*, 384 Ill. App. 3d at 48-52 (collecting cases).

¶ 86 Here, the trial court specifically and repeatedly found that Joe has begun to repay the "loan" from CAI, having paid about $335,000 out of bonuses he received in 2013 and 2014 toward the repayment of that debt. The record supports that finding. Thus, though the trial court never specifically ruled what was and was not "income," the trial court clearly ruled that Joe had treated those payments as loans requiring repayment. So it would have been proper for the court to exclude these CAI payments as "income."

¶ 87 Given the somewhat confusing testimony regarding the officer-loan account, the fact that the numbers did not consistently correspond between the CAI payments and the officer-loan account, and the fact that it was difficult to decipher the full extent of the "personal" expenses paid by CAI—all of which the trial court recognized—the trial court was reluctant to completely ignore the company's payments of expenses on Joe's behalf. Instead, it proceeded more cautiously, noting that while Joe's income "at least on paper" had gone down, it was safer to simply say that his income was "no higher" than it had been pre-divorce. With the exception of the year 2014, that finding is entirely accurate.

¶ 88 And though his 2014 income was significantly higher due to the $350,000 bonus Joe paid himself, nearly all of that bonus went either to withholdings or to the repayment of debt. That

doesn't change the fact that Joe's income went up that year, but it does explain the court's determination, in essence, that Joe's financial situation as a whole had not materially changed for the better since the divorce. That finding was not against the manifest weight of the evidence.

¶ 89 *Standard of Living*

¶ 90 The court shall consider "the standard of living established during the marriage." 750 ILCS 5/504(a)(6) (West 2015). The need for maintenance is measured in light of the parties' standard of living. *In re Marriage of Keip*, 332 Ill. App. 3d 876, 880 (2002). When reviewing this factor, the court only considers the standard during the marriage and cannot consider subsequent improvements. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶¶ 24-26. From a practical standpoint, it is unlikely that the parties can each, individually, maintain the same standard attained during the marriage. *Keip*, 332 Ill. App. 3d at 880. When the standard is unsustainable, "the court must apportion the deficit, balancing the parties' claims to their remaining incomes." *Id.*

¶ 91 Here, the court found that Debra's standard of living, at a minimum, had remained the same, while Joe's has decreased. On appeal, Debra argues the exact opposite is true: Joe's has increased, while her standard of living is threatened without maintenance.

¶ 92 The parties accept, as the court found, that they maintained a high standard of living during their marriage. The evidence showed that the couple owned multiple vacation homes with recreational vehicles such as boats and wave runners. They also took numerous vacations together. Like his current practice, it appears as though Joe would pay for these trips through CAI. Debra complains that the court erred because she "has no business from which she can draw funds to pay her personal bills to maintain her lifestyle. She has only the monies she earns from employment at Walgreens and her maintenance, while Joseph has the wages he earns from

CAI, plus additional extensive sums from CAI, which provide him with whatever he needs or wants."

¶ 93 But Debra does not explain how her standard of living has decreased or how it is threatened by the loss of maintenance. We accept that Debra earns less than Joe, and that losing $9,000 per month is not unsubstantial. But when comparing the parties' current standard of living, we cannot say that the court's finding that Joe's standard of living has decreased is against the manifest weight of the evidence. Joe testified that he had to sell the Colorado property, which he intended to use for retirement, to afford his living expenses. And unlike during the marriage, he no longer has multiple vacation homes—he does still own a timeshare he received in the divorce. The only area where it is clear that Joe's standard of living has remained the same is his ability to take vacations.

¶ 94 In comparison, Debra still owns the two vacation homes she received as part of the divorce decree. Debra does not consider these two homes "vacation homes;" she believes they are more akin to second (and third) residences. Either way, the record shows that she visits them often, even claiming she goes to Wisconsin "all the time." She also still uses the boat and wave runners she obtained in the divorce. Like Joe, she too still has, and uses, the timeshare she received in the divorce. The only thing it appears that Debra has lost is the vacations she used to take with Joe.

¶ 95 The court found that the parties did and still maintain a comfortable standard of living. The court, with this standard in mind, believed that Debra was able to maintain this lifestyle even without maintenance. Debra has not pointed to anything in the record which convinces us that the opposite conclusion is clearly evident.

¶ 96 *Age and Condition of the Parties*

¶ 97 The court must consider "the age and the physical and emotional condition of both parties" (750 ILCS 504(a)(8) (West 2015)) and "any impairment of the present and future earning capacity of either party" (750 ILCS 5/510(a-5)(3). On this, the court found that "both parties are of generally good health and neither presented any testimony or evidence of either any physical limitations or any emotional conditions."

¶ 98 Debra challenges this finding because her "testimony contradicts the trial court's finding that there was no testimony concerning Debra's physical limitations." She says that, because the court failed to consider Debra's testimony, its maintenance analysis is "fatally flawed." She cites *In re Marriage of Johnson*, 2016 IL App (5th) 140479 to support her position. We find *Johnson* readily distinguishable. The payee spouse in *Johnson*, Julie, testified to a number of severe illnesses: depression, asthma, and COPD. *Id.* ¶ 48-50. And even "since these proceedings began, she had been hospitalized four or five times for COPD or related disorders." *Id.* ¶ 50. The appellate court weighed this factor and found that Julie's "significant health issues" weighed in favor of a permanent maintenance award.

¶ 99 Here, in contrast, Debra testified about a number of less serious physical issues: pain in her neck, back, and feet, and arthritis. She also testified that these conditions, while painful, did not seriously interfere with her ability to work. The trial court did not disregard Debra's testimony as to physical ailments but noted that she did not introduce any independent medical evidence to support that testimony. The court also agreed with Joe that these physical ailments did not prevent her from engaging in an "active lifestyle." Aside from the melanomas—which do not appear to have returned—we are not compelled to conclude that Debra has "significant

health issues." See *id*. We do not find the trial court's findings in this regard to be against the manifest weight of the evidence.

¶ 100 *Contribution by the Party Seeking Maintenance*

¶ 101 The court shall consider the "contributions and services by the party seeking maintenance to the education, training, career, or career potential or license of the other spouse." 750 ILCS 5/504(a)(10) (West 2015). Here, the court found that the contribution factor was "not applicable." We do not take that finding, as Debra suggests, as the trial court refusing to consider this factor, but rather simply finding it irrelevant under the facts of this case. See *In re Marriage of Virdi*, 2014 IL App (3d) 130561, ¶ 28 ("the court must consider all *relevant* statutory factors"). Thus, we cannot find *per se* reversible error for failure to consider this factor, as Debra urges.

¶ 102 In any event, we know that Debra worked for Joe's company for several days a week, for a period of five years (after CAI had been up and running for a decade), while also working at Walgreens to maintain her pharmacy license, and that she relocated to support the business. While her services were surely valuable to CAI, this is not a situation where one spouse bankrolled another spouse to get through medical or law school or sacrificed a career to help the other spouse start a business, only to later watch that spouse reap the rewards of professional success while the other suffers financially. So while we agree with Debra that this factor should not have been altogether discounted, we do not find this to be a case where this factor would carry such significant weight that the trial court's finding on this factor constitutes reversible error.

¶ 103 *Earning Capacity*

¶ 104 Debra challenges the court's finding that she made little or no effort to become employed full-time. She claims the court erroneously focused on full-time employment where it should have been focusing on her efforts to become "self-sustaining." The Act provides that the court must consider "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate." 750 ILCS 5/510(a-5)(2) (West 2015).

¶ 105 Debra focuses on the fact she "achieved the $40,000 plus numbers for income set out by Judge Carr for the last three years of the five year maintenance period." As a reminder, the original dissolution judgment stated that

> "[t]he Court believes that Mrs. Caminiti is presently in a position to be earning in the range of Forty Thousand ($40,000.00) Dollars on a yearly basis, should be able to earn more in the future and will receive significant assets in this case to allow her to have passive income to pay her necessary expenses"

¶ 106 The facts show that Debra exceeded the expectation that she could earn $40,000 a year; in fact, she almost doubled that income, earning around $70,000 the year of the review. But we must also consider that Debra nearly doubled the income benchmark *working part time*. The court found that if Debra had been working full-time, she would earn in the ballpark of $130,000.

¶ 107 Debra argues that she "does not have control over whether she is employed full time but she has earned on a part time basis what would be comparable to a full time salary *for most jobs*." First, Debra does not have "most jobs." She is a pharmacist with relatively high earning potential. Second, while it is true she doesn't have complete control over whether she has full-

time employment with Walgreens, she has *some* control. Specifically, Debra is allowed to bid on twelve full-time positions a year. This bidding process is the primary, though not the only, way she could have obtained a permanent position. Bidding takes place every October. Bidding is her choice, within her control. And for most of the five-year review period, she chose to either bid on no positions or on very few. (In 2008: zero bids; 2009: one; 2010: zero; 2011: zero; 2012: zero; and in 2013—the year of the maintenance review: four.) It was not until 2014, after Joe had already sought to terminate maintenance, that Debra finally maxed out her bids at 12.

¶ 108 We appreciate Debra's point that she does not have control over when positions become available, and that it is hard to get a full-time position at a location where one hasn't previously worked. But the court is not faced with considering whether she met the prior benchmark. Its consideration is whether she made a *good-faith effort* to become self-supporting. The court found that she did not. We cannot say that the opposite conclusion is clearly evident.

¶ 109 We also do not believe the fact that Debra nearly doubled the initial estimate of her earning potential is as helpful to her argument as she believes. The trial court here was "also cognizant" of Judge Carr's finding that Debra "should be able to earn more in the future and will receive significant assets in this case to allow her to have passive income to pay her necessary expenses." The trial court did not believe that Debra made a good-faith effort meet her income potential either through her job or passively—*e.g.*, by failing to lease her two vacation homes. Given the evidence presented, we cannot say the court's finding was against the manifest weight of the evidence.

¶ 110 *The Parties' Assets*

¶ 111 As the final factor, Debra challenges the court's consideration of "the property, including retire benefits, awarded to each party under the judgment of dissolution of marriage *** and the

present status of the property." 750 5/510(a-5) (West 2015); also 750 ILCS 5/504(a)(1). Her argument focuses on what she believes is an erroneous characterization of Joe's "golden goose," CAI.

¶ 112 In its judgment, the court believed that there were "serious financial issues that must be addressed (*including* the previously described foreclosure proceedings) by CAI to enable it to continue doing business in the normal fashion." The court also realized that Joe's income is intrinsically tied to the success or failure of CAI.

¶ 113 Debra tries to debunk the idea that Joe could lose the Arlington Design Center in the pending foreclosure case. We realize that the foreclosure case was delayed due to Joe's deferment and re-collateralization agreement with the bank. Yet we must also recognize that this agreement collateralized all three buildings for a mortgage on one. While the record supports the argument that Joe is current on his mortgage obligations, we cannot narrow the breadth of the court's finding to just the foreclosure action. The court found serious financial issues, "including" the foreclosure.

¶ 114 That there were other issues is supported by the record. We cannot ignore the time frame we are discussing, the 2008 recession. The court found Joe testified credibly. See *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 302 (2005) ("It is the function of the trial court to resolve conflicting testimony by addressing the credibility of the witnesses and determine the weight to be accorded their testimony.") Joe extensively discussed the financial troubles that plagued CAI in 2008 and 2009. In just a year, the business income dropped more than 25 percent, and Joe was forced to borrow significant amounts of money just to stay afloat. At the time of the maintenance review, the company was beginning to regain its footing. Joe testified that it was not until 2013 that the company was doing well enough to allow him to take a bonus; a bonus that finally

brought him back up to the salary he was receiving during the marriage. Given the fact that CAI was just starting to escape the specter of financial troubles, we cannot say that the trial court erred by finding that there are still "serious financial issues that must be addressed."

¶ 115 On the other hand, Debra argues that the court inflated her assets. She urges us to recognize that her assets do not generate income like CAI, and that she depends on her income and maintenance. Critical to this point is the court's finding that she did not disclose all of her assets. For example, the court determined that Debra was unable to explain where she received the $4,000 a month to support her investment in Weiss. Debra also claims "the real estate awarded will not generate any income for her unless she sells it." But the trial court expressly determined that she could earn rental income on the vacation homes, something the parties appeared to have done while married. We do not sit in a position to second-guess those findings simply because we may have decided differently. See *Samardzija*, 365 Ill. App. 3d at 708. We cannot say the court's findings regarding the parties' assets are against the manifest weight of the evidence.

¶ 116 We considered all the factors challenged by Debra. Based on our discussion above, balancing all of the factors, in light of the court's findings, we are unable to conclude that the court abused its discretion. The trial court thoroughly and thoughtfully made specific findings regarding each factor. While we understand that Debra has lost a significant source of income, we cannot say that no reasonable person would have adopted the trial court's judgment. See *Blum*, 235 Ill. at 36.

¶ 117 II. Denial of Debra's Fee Petition

¶ 118 Debra also appeals from the trial court's denial of her petition for attorney's fees. The Act allows a court "after considering the financial resources of the parties, [to] order any party to pay

a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2016). A circuit court's decision regarding a fee petition will not be reversed absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL App 120205, ¶ 13. A party's petition for attorney's fees " 'shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504.' " *Id*. ¶ 14 (quoting 750 ILCS 503(j) (West 2014)).

¶ 119 In *Heroy*, our supreme court clarified that the plain language of section 508 did not require proof that the spouse seeking fees had an inability to pay their attorney's fees. *Id*. ¶ 19. Instead, the court reviews the petition in light of the statutory factors. *Id.* ¶¶ 19-20. In reaching its conclusion, the court noted that a number of cases appeared to apply an "inability to pay standard." *Id*. ¶ 18. But,"it is clear that the inability to pay standard was never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance. [Citations.] Rather, a party is unable to pay if, after consideration of all relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *Id*. Applying that standard to the facts of the case, the supreme court affirmed the trial court's decision to award attorney's fees even though each party had a net worth in the millions of dollars. *Id*. ¶¶ 21-22. That decision was, in part, based on the fact that the value of the assets of the spouse requesting fees had decreased by two million dollars "largely due to her payment of attorney fees." *Id*. ¶ 21.

¶ 120 In this case, the trial court denied Debra's fees without discussing *Heroy*. But the court did answer "the threshold question of 'what is the standard by which the court initially assesses DEBRA's fee petition?' " The trial court discussed many of the same cases as *Heroy* and reached the same conclusion: the trial court followed its "statutory directive" and considered the factors

mandated by the Act. (The court did not consider the factors in section 504 because "there was no extension or award of maintenance in these post decree proceedings." See 750 ILCS 508(a) (West 2016).)

¶ 121 Unlike her challenge to the maintenance ruling, Debra does not attack specific factors. Instead, she offers a big-picture argument. She claims that "while [she] was awarded retirement and investment assets in the amount of approximately one million dollars, she will have to pay taxes on any money she takes out of these investments to pay her expenses. The real estate she was awarded, likewise, will not generate any income for her unless she sells it." These statements simply rehash some of her arguments from above—and we reach the same conclusion on them in the context of the fee petition.

¶ 122 Debra also discusses the line of credit she took out to "pay her taxes and fund her investment in Weiss properties, which now has a balance of $160,000." First, we note that a balance of $160,000 is not spectacular given that it was a $160,000 line of credit. From these two arguments Debra concludes that she will be required to " 'deplete her means of support' and 'undermine her economic stability to pay attorneys fees.' " She then goes on to discuss Joe's net worth and how CAI's income has increased. She concludes that "[c]learly Joseph is better able to pay some or all of Debra's attorney fees than she is, and should be required to do so."

¶ 123 But the question is not simply who is "better able" to pay attorney's fees. The court must exercise its discretion based on the statutory factors. Here, the trial court relied heavily on its previous findings of fact, which we have upheld. In particular, the court emphasized that it believed that Debra had failed to fully disclose her assets. The court expressly found "that DEBRA has the ability to pay the totality of her attorneys' fees incurred in the action."

¶ 124 We do note that the court didn't express its opinion on whether "requiring [Debra] to pay the entirety of the fees would undermine *** her financial stability." *Heroy*, 2017 IL App 120205, ¶ 19. And we recognize that being *able* to pay does not foreclose the possibility that doing so will undermine the party's financial stability. See *id.* ¶¶ 21-22. Still, given the trial court's conclusion that Debra had the ability to pay these fees, combined with its finding that Debra had not been fully forthcoming in disclosing her financial assets, we cannot say that the record clearly shows that Debra's financial stability will be undermined if she is required to pay her attorney fees, such that the trial court's denial of the fee petition was an abuse of discretion.

¶ 125 III. Order Granting Joe's Motion for Repayment

¶ 126 On this final issue, Debra claims the court erred "as a matter of law" by making its judgment terminating maintenance "*nunc pro tunc* to October 27, 2013." Thus, she says, requiring her to repay excess maintenance, pursuant to that order, was necessarily improper.

¶ 127 A reminder of the context: Joe's petition to terminate maintenance was filed in September 2013, in anticipation of the maintenance-review deadline in October 2013. Debra filed a cross-petition to continue maintenance, and in October 2013, Joe amended his original petition to terminate. The trial court made it clear from the outset that any order it would make on this issue would be retroactive to that deadline. That is, the court ordered that maintenance payments should continue while the court considered the cross-petitions regarding maintenance but subject to "off-sets as directed by the court upon the ruling on the pending petitions." So if the court ultimately decided to reduce or terminate maintenance, it would offset the maintenance awarded during this interim period accordingly, potentially resulting in a full refund of maintenance paid during that interim period. Debra was clearly on notice of this possibility.

¶ 128 And if the court hadn't made that clear, it should have been clear to the parties, anyway. Illinois law specifically provides that "except as otherwise provided, *** the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2017); see *In re Marriage of Culp*, 341 Ill. App. 3d 390, 400 (2003) (court did not abuse its discretion by making modification of maintenance retroactive to review date set by court because party "had notice his maintenance obligation might change as of that time.")

¶ 129 When the court ultimately ruled and terminated maintenance, it made its ruling retroactive to October 27, 2013—just as it warned it would—and thus ordered the repayment of any maintenance Joe had paid Debra during that interim period. There was no error in so doing.

¶ 130 Debra's entire argument is based on the court's usage of the phrase "*nunc pro tunc*." She claims that the court's order was an improper use of a *nunc pro tunc* order.

¶ 131 *Nunc pro tunc* means "now for then." *Gagliano v. 714 Sheridan Venture,* 144 Ill. App. 3d 854, 856 (1986). A *nunc pro tunc* order is used to clarify, in a later order, what the court *actually* did in an earlier order. *Id*; see also *In re Young's Estate,* 414 Ill. 525, 534 (1953); *Roach v. Coastal Gas Station,* 363 Ill.App.3d 674, 678 (2006). A classic example would be if the court orally ordered judgment in favor of a plaintiff for ten million dollars, but the written order accidentally omitted a zero and thus incorrectly read *one* million dollars. The court would be within its authority to enter a ten-million-dollar judgment order *nunc pro tunc* to correct or clarify the actual judgment it rendered on the earlier date, the scrivener's error notwithstanding.

¶ 132 That concept has no application here, as Debra notes. There was no order on October 27, 2013 that incorrectly described the court's judgment on that date and required correction or clarification. Indeed, there was no order on that date, period.

¶ 133 So what to make of this order? " 'Generally, the intention of the court is determined by the language in the order entered, but where the language of the order is ambiguous, it is subject to construction.' " *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28. When ambiguous, the order " 'should be interpreted in the context of the record and the situation that existed at the time of [its] rendition.' " *Id.*

¶ 134 Here, there is no doubt that the trial court used the phrase "*nunc pro tunc* to October 27, 2013" to mean "*retroactive* to October 27, 2013." It is not the first time we have seen trial courts confuse the terms. Debra cannot possibly ask us to believe that she didn't understand what the court intended. The court told the parties on the front end that any ruling on maintenance review would be retroactive, and then it clearly made its ruling retroactive. The use of the phrase "*nunc pro tunc*" was unfortunate, but it did not affect the trial court's authority to issue a retroactive judgment here. As we've already noted, not only did the court warn the parties in advance of this possibility, but state law and case law likewise make that authority clear.

¶ 135 Indeed, even if we vacated the order to repay maintenance, the trial court would simply re-enter the order on remand and do the same thing again, only this time using the word "retroactive" instead of the phrase "*nunc pro tunc*." We can't imagine how anyone would gain from this judicial inefficiency. We will not do so, when it is clear to us exactly what the trial court intended, an improper use of a phrase notwithstanding.

¶ 136 There being no doubt as to what the court intended by the order, and there being no doubt that it had the authority do what it intended, we find no error on this point.

¶ 137 CONCLUSION

¶ 138 For the reasons stated, we affirm the trial court's judgment in all respects.

¶ 139 Affirmed.