2019 IL App (2d) 171010-U
No. 2-17-1010
Order filed February 4, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF BEAULIEU DAVID A. BEAULIEU, Petitioner-Appellee, v. MICHELLE BEAULIEU, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 12-D-1181 Honorable Timothy McJoynt, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Birkett and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by extending respondent's rehabilitative maintenance but decreasing the amount where respondent was employed only part time and had shown ability to be gainfully employed; respondent forfeited issues related to deviation from child-support guidelines where she failed to raise the arguments in the trial court; trial court affirmed.

¶ 2 Respondent, Michelle Beaulieu, appeals the trial court's order modifying petitioner, David A. Beaulieu's, maintenance and child support obligations. Michelle argues that the trial court abused its discretion by (1) reducing maintenance and (2) deviating downward from the child support guidelines and applying reductions not allowed under section 505 of the Illinois

Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505 (West Supp. 2017)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties married in 1997 and had two children, a daughter, born in 1998, and a son, born in 2001. On June 5, 2012, David petitioned for divorce. On February 6, 2014, the parties entered into a parenting agreement under which the parties shared joint custody of their children with David having primary residential custody.

¶ 5 In March 2014, following a bench trial, the trial court entered a judgment of dissolution, reserving the issue of child support. At the time, David was 48 years old and Michelle was 47 years old. The parties had been married for 17 years. David was a college graduate earning $283,000 per year. Michelle was a high school graduate and was unemployed, but the trial court imputed $24,000 in income to her. The parties had essentially no marital property. With respect to maintenance, the court found, in pertinent part:

> "It is clear the [David] has been the main 'breadwinner' for the family for the most part but it is also true that during the marriage, both before and after the birth of the children [Michelle] was gainfully employed. She had jobs as well as her shoe store businesses. At times during the marriage her income was significant. *** T]he evidence indicated she had skill and was employable[.] *** All parties do agree that in 2008 her income went down substantially.
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> In 2008 [Michelle] was without income or employment primarily due to her misuse of alcohol. *** [T]he children were born in 1998 and 2001 and she worked well past those dates. For the last six years [Michelle] has gone through numerous sessions

and hospital stays to treat her disease and this is the primary reason she did not work. Regardless of the reason though, the Court must consider that she has been out of the workforce for that period of time.

David's income now is in excess of $270,000 per year gross and his actual gross income for 2013 was $325,000. [Michelle's] current income is 0 but it would appear she has employable skills now too. The issue of course is her ability to remain sober. Accordingly the maintenance award in this case shall be rehabilitative in nature. An additional concern is [Michelle's] apparent 'position' in this case that she has not and will not look for work at this time – due to her intention to maintain sobriety the Court assumes. This position she takes as to this issue is troubling to the Court in that she on one hand indicates she is now 'clean and sober' and can manage children and parenting duties and yet she is unable to work and attempt to rehabilitate herself and become somewhat self-sustaining.

[Michelle's] background in working in the fashion industry and running two shoe stores clearly indicates she has skills despite the time that has passed since she used to do same. She only has a high school degree but she has years of experience too. Her lack of effort in even pursuing employment is misplaced. If she feels she needs to continue to go to yoga classes and to treat her addictions what she failed to address was for how long? *** As [David] correctly argues, is he to simply pay her maintenance for an undetermined time while she parents the children [now 12 and 15 years old] only part time without any income or job? [Michelle] indicates she cannot get back into the fashion industry unless she relocates to New York but there was no other evidence to

> corroborate this claim. She indicates an interest to get into the preparation of 'healthy foods' but no business plan was put forth by her in this regard.
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> In this case the life style was somewhat above average and this of course must end. [Michelle] appears to have been clean and sober for an extended period of time and so it is the Court's opinion she can seek employment now and continue to treat her addiction problem. *** The Court must impute at least $25,000 per year in income to [Michelle] in calculating the amount of maintenance the court will award to [Michelle].

The court awarded Michelle rehabilitative maintenance, ordering the following:

> "David shall pay Michelle for rehabilitative maintenance, the sum of $7,500 per month plus 35% of the net amount of any additional income he receives over a gross of $283,000 up to a cap of $450,000 per year gross per calendar year. *** It shall be modifiable in the event of change of circumstances and shall cease in the event of an occurrence of any of the statutory events in Section 504 of the Act. Michelle is ordered to seek employment immediately and to rehabilitate herself to the best of her ability. Maintenance shall be reviewed on June 1, 2017, and the burden shall be on Michelle to show a need to continue the maintenance at some amount at that time, if any. In the event Michelle does not file a petition for review for extension of maintenance before June 1, 2017, maintenance for her shall cease forever."

¶ 6 On May 4, 2014, the trial court modified the March 2014 order regarding maintenance, such that David was still obligated to pay Michelle $7500 monthly, but now only 18% on his gross income above $282,000 capped at $450,000 per year.

¶ 7 On July 25, 2014, the trial court ordered David to pay Michelle $450 per month in child support.

¶ 8 On January 13, 2017, Michelle filed a petition for extension and modification of maintenance wherein she alleged the following. David's income had remained the same since the time of the judgment of dissolution. Since the judgment of dissolution Michelle began working in retail. However, in 2016 she was diagnosed with breast cancer. Due to her breast cancer surgery, future surgery, ongoing treatments, and therapies, Michelle had been unable to work. She sought an order to increase, extend, and modify maintenance.

¶ 9 On March 20, 2017, David filed an amended petition to reduce child support, seeking a reduction due to the emancipation of the oldest child. David also filed a petition for contribution to college expenses.

¶ 10 On October 23, 2017, the trial court conducted an evidentiary hearing on all three petitions. Michelle testified as follows. In 2000 Michelle was vice president of sales for a clothing company and earned $250,000 a year. She also used to own two shoe stores. From August 2015 to May 2016 she worked part time as a sales clerk at a retail store, 10-12 hours a week, where she earned $12 an hour. She stopped working in May 2016 when she was diagnosed with breast cancer. In August 2016 Michelle underwent a double mastectomy and reconstructive surgery. Michelle was instructed by her doctors to remain immobile for eight weeks after the surgeries. Thereafter, she had her lymph nodes removed. In October 2016 Michelle's doctors informed her that she was "cancer-free." She had her final reconstructive surgery in February 2017. Michelle attends physical therapy three times a week, a lymphatic drainage specialist and chiropractor "regularly," and a therapist weekly. Michelle is a member of Lifetime Fitness and works out there three to five times a week. Michelle testified that the "pain

and physical ability did not allow me to try to get employment in early 2017." Michelle had outstanding medical bills of $8415 for 2016 and $6550 for 2017. Michelle's financial affidavit was admitted into evidence.

¶ 11 David testified as follows. In 2016 David worked for a company named Avatar and his 2016 tax return showed $347,000 in gross wages. He left Avatar in May 2016 and started his own consulting business, Hudson Advisory Services (Hudson). At the time of the hearing, Hudson netted $32,114. David was also employed full-time by a company named Maritz and earned a salary of $300,000 per year gross. In June 2017, he received a $10,000 bonus. David travelled for business and pleasure. David owed $120,000 to the Internal Revenue Service for which he was paying $2000 each month toward the debt. David's financial affidavit was admitted into evidence.

¶ 12 The trial court indicated that it had considered all of the evidence and testimony and all of the factors set forth in sections 510(a-5), 504(a), and 513 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a-5), 504(a), 513 (West Supp. 2017)). The court made the following factual findings regarding Michelle. Michelle worked part time 10 to 15 hours a week, earning $15 an hour, "which is about $11,700 a year gross." In 2015 Michelle was diagnosed with breast cancer and in May 2016 she stopped working to treat her cancer, which included a double mastectomy. In October 2016 Michelle was found "cancer free," but subsequently she had "extensive medical treatments including reconstructive surgery and other medical activities that did clearly inhibit her ability to rehabilitate and become full-time employed at those times." But "Michelle's health was improving." Michelle, now 50 years old, had two years of college credits and no associate's degree; she had retail experience in fashion and had sought employment in those areas. Michelle had incurred substantial medical expenses

due to her illness and had "virtually no savings." Michelle's financial statement indicated a monthly income of $5589 and expenses of $8644. David's income was up, in that it was "in excess of $300,000 and, again I'm going to impute [Michelle's] income at $25,000 just as I had done before."

¶ 13 The trial court made the following findings regarding David. David's gross income was $347,000 a year, which is a "substantial increase from $283,000 a year from 2014, another substantial change in circumstances." David left his old employment and started his own company. David's lifestyle of travel is dramatically different from Michelle's. David has paid his emancipated daughter's college expenses "up to now."

¶ 14 On November 21, 2017, the trial court entered an order granting Michelle's petition to extend maintenance, ordering David to pay Michelle rehabilitative maintenance of $5600 monthly, plus 20% of his net income above $335,000 gross capped at $400,000. Maintenance was reviewable on November 1, 2020. The trial court granted David's motion to reduce child support due to emancipation of the oldest child but ordered David to pay $800 in child support for the parties' remaining minor child.

¶ 15 On November 21, 2017, Michelle filed a notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 A. Maintenance

¶ 18 Michelle argues that the trial court abused its discretion by reducing maintenance and that its decision was against the manifest weight of the evidence.

¶ 19 In reviewing maintenance, a trial court is required to consider all of the relevant factors in sections 510(a-5) and 504(a) of the Act. 750 ILCS 5/510(a-5), 504(a) (West Supp. 2017);[1] *Blum*

[1] The version of the Act applicable here, is the version that was in effect when Michelle filed her

v. Koster, 235 Ill. 2d 21, 36 (2009). "The benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, the duration of the marriage, the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the non[ ]marital property." (Internal quotation marks omitted.) *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004). "[C]ourts have wide latitude in considering what factors should be used in determining reasonable needs, and the trial court is not limited to the factors listed in the governing statute." (Internal quotation marks omitted.) *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10.

¶ 20 The optimal goal of rehabilitative maintenance is, after a period of renewing or developing skills, or reentering the job market, the dependent spouse will be able to become self-

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motion to extend and modify maintenance. 750 ILCS 801(c) (West Supp. 2017). Section 801(c) of the Act provides that "This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act." 750 ILCS 5/801(c) (West 2016). Here, Michelle filed her petition to extend and modify maintenance on January 13, 2017. Thus, her petition was filed after the effective date of Public Act 99-90 but before the effective date of Public Act 99-764 (eff. July 1, 2017). The petition sought modification of the trial court's March 2012 order, an order entered prior to the effective date of Public Act 99-90. Therefore, Michelle's petition clearly fell within section 801(c). See *In re Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 29. As such, the changes effectuated by Public Act 99-90 govern these proceedings. *Cf. In re Marriage of Benink*, 2018 IL App (2d) 170175, ¶ 29 (changes effectuated by Public Act 99-90 did not apply to parties' petitions for modification of child support because the petitions were filed prior to January 1, 2016).

sufficient through his or her own income. *In re Marriage of Heasley*, 2014 IL app (2d) 130937, ¶ 23. See also *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008).

¶ 21 When reviewing maintenance, a trial court has the discretion to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms. *Blum*, 235 Ill. 2d at 36. A trial court's decision to modify maintenance will not be disturbed absent a clear abuse of discretion. *Id*. A clear abuse of discretion occurs when a trial court's ruling is arbitrary or fanciful, or where no reasonable person would agree with the court's position. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 26. "The mere fact that reasonable persons could reach different conclusions on the facts of the case is insufficient to find that the trial court abused its discretion; only if no reasonable person could find as the trial court did is there an abuse of discretion." *In re Marriage of Nuechterlein*, 225 Ill. App. 3d 1, 8 (1992).

¶ 22 Initially, we note that before deciding to extend and modify Michelle's maintenance award, the trial court stated that it considered the testimony from the parties during the hearing on the petition, its letter opinion containing its findings after trial on David's petition for dissolution, its judgment of dissolution, and its subsequent orders.

¶ 23 In 2014 the trial court ordered David to pay Michelle $7600 a month rehabilitative maintenance and $450 a month child support, or a total of $7950 monthly. The trial court ordered Michelle to seek employment *immediately* and to rehabilitate herself to the best of her ability. Further, the trial court further stated that upon a review of maintenance "the burden shall be on Michelle to show a need to continue the maintenance at some amount at that time, if any." The trial court's order provided Michelle three years to work toward self-sufficiency.

¶ 24 According to the trial court's findings contained in its February 2014 letter opinion Michelle had employable skills in the fashion industry and in 2000 she earned $250,000 as the vice president of a clothing manufacturer. However, in 2008 she was unemployed due to her alcohol misuse. At the time of the judgment of dissolution, 2014, she appeared to be "clean and sober for an extended period of time." Despite this fact, Michelle chose not to work because she wanted "to maintain her sobriety."

¶ 25 According to the evidence presented at the hearing on Michelle's petition for extension and modification of maintenance, Michelle did not work again until April 2015, after the parties' divorce, and then she worked only 12 to 15 hours a week. Michelle provided no testimony that she continued to search for full-time employment either before or after he cancer treatments.

¶ 26 Here, the trial court considered the enumerated statutory factors and the record supports its decision to continue Michelle's award of maintenance at a reduced amount. The trial court decided to extend David's obligation to pay Michelle maintenance for an additional three years but lowered the monthly maintenance amount to $5600. Based on the evidence contained in the record we cannot say that the trial court abused its discretion.

¶ 27 Michelle argues that the trial court's reduction of maintenance was against the manifest weight of the evidence because the court found that David had an increased ability to pay, while Michelle had increased needs and a decreased ability to support herself. Michelle also contends that all of the relevant statutory factors weigh in favor of an increase in maintenance or a continuation of the prior maintenance amount.

¶ 28 Contrary to Michelle's assertion, the trial court did not find that her needs were greater than David's, explaining that each "party apparently has expenses in excess of their income."

See 750 ILCS 5/504(a)(2) (West Supp. 2017)). Further, a review of the trial court's findings indicates that it did not find that all the factors weighed in favor of Michelle.

¶ 29 Michelle also argues that there are no facts in the record to support a decrease in maintenance and that the trial court's hope that Michelle's health condition would improve was "admittedly speculative." Here, the trial court found that Michelle's "situation seems to be improving a bit as of the time of the hearing where perhaps she was going to be in better health in the future." This finding is supported by the evidence. Michelle testified that in October 2016 she was cancer free. She had her last reconstructive surgery in February 2017. Thus, the trial court's statement was not speculative but was based on the evidence.

¶ 30 B. Child Support

¶ 31 Next, Michelle argues that the trial court's downward deviation in child support was an abuse of discretion because it applied reductions not allowed under section 505 of the Act (750 ILCS 5/505 (West Supp. 2017)). In particular, Michelle contends that the trial court erred by deviating downward without a written finding that the application of the statutory child support guidelines were inequitable, unjust or inappropriate, and by considering David's parenting time, and maintenance and college obligation. Michelle urges this court "to reset David's child support obligation at $1,504.13[.]"

¶ 32 Our review of the record reveals that Michelle failed to present the issues she now presents to this court regarding child support to the trial court for argument and consideration, or in a post-judgment motion. Indeed, she raises all of these arguments for the first time in this appeal. As such, these issues are forfeited. It is well settled that "[i]ssues not raised in the trial court are [forfeited] and cannot be argued for the first time on appeal." *In re Marriage of Minear*, 181 Ill. 2d 552, 564 (1998); *McKinney v. Castleman*, 2012 IL App (4th) 110098, ¶ 20.

¶ 33 The forfeiture in this case is a particular form of forfeiture called a *procedural default*. Michelle never raised any of the issues she claims as error in the trial court and thus did not give the trial court the opportunity to clarify, explain or reconsider its decision regarding child support. Having failed to address neither the issues nor the evidence below Michelle is essentially seeking *de novo* review of the portion of the judgment relating to child support. David does not raise forfeiture. Nevertheless, the Michelle is using the lack of any objection, argument, or presentation of evidence as a sword instead of a shield. It is not the function of this court to review these matters for the first time, especially exercises of discretion, albeit pursuant to guidelines. As our Supreme Court explained:

> "It has frequently been held that the theory upon which a case is tried in the lower court cannot be changed on review, and that an issue not presented to or considered by the trial court cannot be raised for the first time on review." *Daniels v. Anderson,* 162 Ill. 2d 47, 58, (1994) (citing *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975).

¶ 34 Moreover, to permit Michelle to introduce a new position on review would not only weaken the adversarial process and our system of appellate jurisdiction, but may also prejudice David. See *id*. at 59. Had Michelle raised the arguments she now raises David and the trial court may have addressed her arguments. Indeed, the trial court may have made specific findings addressing Michelle's arguments. Thus, we determined Michelle has forfeited these arguments on appeal. See *Daniels*, 162 Ill. 2d at 59.

¶ 35 This is similar to the lack of a sufficient record cited by *Foutch v. O'Bryant*, wherein "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.

Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92, (1984).

¶ 36 Forfeiture notwithstanding, we have no inclination to accept that Michelle's arguments have merit. We note that prior to the trial court's order at issue, David was obligated to pay Michelle $400 for child support. The issue of child support was raised by David in his petition to modify due to the emancipation of the parties' oldest child. Nothing in the record indicates that Michelle asked for an increase in child support in a pleading or during argument at the hearing on the petitions. After a hearing on the parties' petitions, the trial court granted David's petition regarding the emancipation of the eldest child, but increased his child support obligation to $800 monthly. Thus, we fail to understand how Michelle was prejudiced by the trial court's decision. In addition, the record reflects that the trial court stated its reasons for the downward deviation, in accord with section 505(a)(3.4)(C) of the Act. 750 ILCS 5/505(a)(3.4)(C) (West Supp. 2017). The trial court stated that David was assigned approximately $20,000 per year in the parties' eldest child's college costs, while Michelle was ordered to pay $4650 per year. Further, the minor child primarily resides with David and David was ordered to pay Michelle $5600 monthly in maintenance. Accordingly, even if Michelle had not forfeited the arguments regarding child support, she failed to establish that the trial court abused its discretion by ordering David to pay $800 monthly in child support.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment of the trial court.

¶ 39 Affirmed.