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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
MICHAEL TURANSICK,)	of Lake County.
)	
Petitioner-Appellee,)	
)	
and)	No. 05-D-2240
)	
LAURA TURANSICK,)	Honorable
)	Joseph V. Salvi,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Birkett and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly implemented our mandate but abused its discretion in determining the appropriate amount of maintenance.

¶ 2 The respondent, Laura Turansick, appeals from the judgment of the circuit court of Lake County awarding her \$13,500 per month in permanent maintenance. On appeal, Laura argues that the maintenance award was based on an improper determination of her annual income, applied the wrong tax rate, and did not include certain expenses necessary for her to maintain the marital standard of living. We affirm as modified.

¶ 3 **BACKGROUND**

¶ 4 The parties are familiar with the underlying facts of the case which were set forth in this court's previous order. *In re Marriage of Turansick (Turansick I)*, 2018 IL App (2d) 170522-U. As such, we recite only those facts necessary to address the issues on appeal. The parties were married in 1987 and had two sons, who were born in 1993 and 1997. In 2005, Michael petitioned for dissolution of the marriage. The judgment of dissolution entered in 2007 incorporated a marital settlement agreement (MSA), which required Michael to pay \$200,000 per year in unallocated support and an additional \$127,000 per year in child support. These amounts were modified by agreed order in October 2013 and February 2015.

¶ 5 In 2016, Laura filed a petition seeking to permanently extend and increase maintenance. A hearing was held on the petition in January 2017. Following a hearing, the trial court found that Laura needed maintenance of \$8,500 per month to maintain her standard of living and ordered that it be nonmodifiable for a period of seven years and eight months. Laura timely appealed the trial court's order.

¶ 6 On appeal to this court, Laura argued that the trial court erred in making maintenance nonmodifiable, in failing to make maintenance permanent, and in reducing the amount of maintenance. *Turansick I*, 2018 IL App (2d) 170522-U, ¶ 33. We held that the trial court erred in failing to award permanent maintenance to Laura (*id.* ¶ 48) and remanded for the trial court to determine the proper amount of that maintenance (*id.* ¶ 50). In so ruling, we noted that the parties agreed that the marital standard of living included one or two vacations involving travel each year, the maintenance of the marital home in Lake Forest, the keeping of a horse for Laura, and a new car for each spouse every three to five years. *Id.* ¶ 44.

¶ 7 We also noted that each party had an expert accountant testify regarding Laura's monthly living expenses. *Id.* ¶ 16. Michael's expert, Cathy Belmonte-Newman, concluded that Laura's adjusted monthly living expenses were \$12,800, but this amount did not include any

amortization expense for Laura's recent purchases of a car and a horse. *Id.* We noted that Belmonte-Newman's report was not a "lifestyle" analysis. Edward Schroeder, Laura's expert, did conduct a lifestyle analysis. Schroeder's report included amortization of Laura's recent purchases of a car, appliances, and a horse. Schroeder criticized Belmonte-Newman for failing to take these expenditures into account. *Id.* He calculated that Laura's adjusted monthly living expenses were \$15,600. *Id.* We further stated that:

"On remand, the trial court must look to the evidence presented by the parties on [the marital standard of living], including the testimony of the parties' expert witnesses regarding Laura's adjusted monthly living expenses. Although these experts differed slightly in their methods and ultimate conclusions, the expenses they documented ranged from a low of \$12,800 (Belmonte-Newman) to \$15,600 (Schroeder) per month, net of taxes." *Id.* ¶ 51.

¶ 8 On remand, Laura filed a motion to implement the mandate of the appellate court. Laura pointed out that Schroeder calculated her monthly living expenses to be \$15,600 per month and asserted that this did not include the additional lifestyle expenses that were part of the marital standard of living. She attached, as an exhibit, some calculations by Schroeder grossing up the maintenance award for taxes. Schroeder calculated that Laura's effective federal tax rate was 25% and that her total tax rate was 30%. This was based on gross income of about \$270,000 and taking a standard head-of-household deduction. Laura also attached as a demonstrative exhibit an "additions to lifestyle" report. She asserted that to maintain the marital standard of living she needed annual amounts for travel (\$10,000), health club membership (\$1800), higher end insurance (\$5000), out-of-pocket medical and dental expense (\$3000), dining/entertainment (\$4800), home repairs (\$5000) and clothing (\$5000). Laura did not provide any evidence to support these additional expenses. Combined with Schroeder's numbers, and including taxes,

Laura stated that she needed \$26,427 per month to maintain the marital standard of living. On July 18, 2018, the trial court entered an order setting the matter for “argument and not as an evidentiary hearing which may be set if the court determines evidence is needed.”

¶ 9 On September 25, 2018, a hearing was held on Laura’s motion to implement the mandate of the appellate court. At the outset, the trial court stated that both experts examined only the amounts Laura was expending at the time but did not conduct an analysis of her costs during the marriage. The trial court acknowledged testimony about vacations, keeping horses, living in Lake Forest, and dining out, but noted that it did not know the costs of a Caribbean vacation, or of living and dining out in Lake Forest. The trial court stated that it believed that the appellate court was telling it that Laura’s monthly expenses should fall somewhere between the two experts’ numbers.

¶ 10 Laura tendered her “additions to lifestyle” report as a demonstrative exhibit. Laura stated that she believed there was already sufficient evidence in the record about the costs of the lifestyle during the marriage, but noted that the trial court could hold an evidentiary hearing on the costs of the marital standard of living if it felt more evidence was needed. Laura asserted that Schroeder’s report documented the cost for Laura to live in Lake Forest and noted that there should be additional costs for a horse, dining out, vacations, and other items mentioned by the appellate court. Laura argued that Schroeder’s report was a more accurate picture of the marital standard of living because the appellate court noted that Schroeder did a lifestyle analysis and Belmonte-Newman did not. Laura also argued that Belmonte-Newman’s report was wrong because she did not include the cost of a new car and a new horse, and because she did a five-year amortization on the cost of new appliances.

¶ 11 Michael argued that, per the appellate court mandate, the trial court was to make its maintenance determination based on the evidence that was already received. Michael argued

that both experts' reports had expenses for the children embedded in their numbers and that the trial court should figure out what numbers belonged and what should be removed. Michael argued that Schroeder should not have included life insurance, double-counted some expenses, failed to consider the trade-in and maintenance contract on the purchase of Laura's new car, and should not have assumed a real estate tax increase on the marital home. Michael asserted that correcting for these errors would bring Schroeder's estimate of Laura's monthly living expenses down to \$14,500 per month.

¶ 12 Following argument, the trial court requested that the parties each submit a proposed order addressing the amounts necessary for Laura to maintain her standard of living and an amount for Laura's earnings.

¶ 13 In her proposed order, Laura argued that her effective federal tax rate was 25.11% and her effective state tax rate was 4.95%, for a total effective tax rate of 30.06%. She stated that this was supported by Schroeder's report and her tax returns from prior years. Laura stated that her taxable income included a salary of \$24,200 plus \$4000 in income from side jobs.

¶ 14 Laura stated that Belmonte-Newman did not provide a lifestyle analysis and that her report of Laura's monthly expenses did not include the cost of a horse, the amortization of a car, or consideration of the repair expenses associated with maintaining a home. Laura asserted that if Belmonte-Newman's numbers were corrected to include these items, her numbers would be consistent with Schroeder's calculations. Laura asserted that Schroeder's report should be used as a baseline and that her additional lifestyle expenses should be added to it. She stated that there was sufficient evidence of these expenses and that the trial court could also use its own everyday experiences when awarding maintenance. She asserted that the additional lifestyle expenses amounted to \$3500 per month. Laura attached another "additions to lifestyle" report to her proposed order. In addition to the expenses requested in her previous report, Laura also

requested amounts for antiquing and technology. For each asserted additional expense, Laura cited to testimony from the record to support that each of her additional lifestyle expenses were part of the marital standard of living. Laura's proposed order stated that maintenance should be set at \$23,972.72 per month.

¶ 15 In his proposed order on remand, Michael asserted that Laura's income, including perquisites and side jobs, was between \$42,000 and \$45,000, based on Laura's testimony and that of the vocational expert, Deborah Gordon. See *id.* ¶¶ 11-15. Michael stated that Schroeder's report was inaccurate in including a 5% property tax increase, failing to consider a trade-in and a maintenance contract on Laura's new car, double-counting certain expenses, including life insurance, and including expenses related to the children. Michael acknowledged that Belmonte-Newman's report did not include Laura's recent purchase of a car, and that if factored in, her estimate of Laura's monthly expenses would be \$13,254. However, that number also included expenses related to the children. Michael concluded that Laura needed \$11,000 per month to maintain the marital standard of living. Michael stated that Laura's effective tax rate was 22%, and that considering her income, Michael should pay \$10,500 per month in permanent maintenance.

¶ 16 On November 2, 2018, the trial court entered its order on remand. The trial court found Laura's employment income, including her perks and side jobs, to be \$38,000 per year or \$3167 per month. The trial court found her effective tax rate to be 22%. The trial court noted that Schroeder conducted a lifestyle analysis five to eight years after the dissolution of the marriage and that it contained inaccuracies. The trial court listed those inaccuracies, which were the same as those set forth in Michael's proposed order on remand. The trial court noted that Belmonte-Newman did not include the cost of a monthly car payment in her report and that, if she had, Laura's monthly expenses would be \$13,254. The trial court found that, regarding vacations and

eating out, there was a similarity in the lifestyle of the marriage and Laura's lifestyle after the marriage dissolved. The trial court noted that "[t]here was no quantifiable evidence as to the cost of Laura's lifestyle prior to filing for divorce in 2005, other than the information contained in the experts' reports which included the minor children's expenses outlined and embedded in household expenses that are comprised in the above amounts." The trial court concluded that Laura needed \$13,000 per month after tax to maintain the marital standard of living. Considering her effective tax rate, the trial court found that Laura needed gross monthly income of \$16,667 to maintain the marital standard of living. Subtracting her monthly income of \$3167, the trial court ordered Michael to pay \$13,500 per month in permanent maintenance. Considering the time from which the petition was filed, the trial court ordered Michael to pay an arrearage of \$108,000. Thereafter, Laura filed a timely notice of appeal.

¶ 17

ANALYSIS

¶ 18 On appeal, Laura argues that the trial court erred in: (1) determining her income, (2) applying the wrong tax rate, and (3) refusing to implement the mandate of the appellate court. Generally speaking, a trial court's decision regarding maintenance is reviewed for an abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). An abuse of discretion occurs where no reasonable person would take the view of the trial court (*id.*), where the trial court has applied an improper legal standard (*In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 31), or where the trial court's decision rests on an error of law (*People v. Olsen*, 2015 IL App (2d) 140267, ¶ 11). Further, we will not set aside a factual finding, such as the determination of a party's income, unless it is clearly against the manifest weight of the evidence. *In re Marriage of Swigers*, 176 Ill. App. 3d 795, 801 (1988).

¶ 19 Laura's first contention on appeal is that the trial court erred in determining her income. A 2015 tax return and a 2016 paystub indicated that Laura earned about \$24,000 in wages.

There was also testimony that Laura earned between \$1,000 and \$6,000 per year on landscaping side jobs. Laura also received about \$10,000 per year of free in-kind landscaping services from her employer. The trial court stated that its income determination of \$38,000 was based on Laura's salary, perks, and side jobs. Further, Laura's maintenance award was based on Belmonte-Newman's determination of Laura's monthly living expenses. However, those monthly living expenses did not take into consideration that \$10,000 of Laura's "income" was being used toward landscaping services. Laura argued that, if the trial court was going to add \$10,000 to Laura's income for the free landscaping services, Laura's monthly living expenses should have been increased proportionately.

¶ 20 We agree with Laura's contention and hold that the trial court erred in including the free landscaping services as part of Laura's income for the purpose of determining a proper amount of maintenance. The value of the free landscaping services was not money that Laura could put toward other monthly living expenses. There was no evidence that she could forego the landscaping services and instead receive additional income. The marital standard of living included living on two and one-half acres in Lake Forest and maintaining the property. Accordingly, the trial court abused its discretion in including the landscaping perk in Laura's income since the landscaping services were not also considered as part of her expenses in maintaining the marital home. In determining the proper amount of maintenance, the trial court should have considered Laura's employment income to be \$28,000 per year or \$2333 per month.

¶ 21 Laura's next contention on appeal is that the trial court applied the wrong tax rate in adjusting her maintenance award for taxes. The trial court found that her effective tax rate was 22%. Laura attached to her motion to implement the mandate of the appellate court a report by Schroeder, which included a table of 2018 federal tax rates and calculated that on approximate gross income of \$278,000, and taking a standard head-of-household deduction, Laura would pay

an effective federal tax rate of 25%. The state tax rate was about 5%. Laura argues that her total effective tax rate was thus 30%.

¶ 22 Based on the evidence presented to the trial court, we cannot say that the trial court erred in finding that Laura's effective tax rate was 22%. The trial court's tax rate determination was supported by Laura's 2015 amended individual income tax return, which showed that, on gross income of \$171,795, Laura owed \$29,816 in taxes. This was a tax rate of 17.3%. Laura's 2014 federal tax return also showed an effective federal tax rate of 17%. The trial court thus reached a total tax rate of 22%, presumably including an Illinois flat tax rate of about 5%.

¶ 23 We acknowledge that there were federal tax reforms in 2018. However, Schroeder's tax calculation was based on a standard head-of-household deduction. On her 2014 and 2015 tax returns, Laura itemized her deductions and claimed exemptions. Laura did not present evidence as to whether, in consideration of the tax reforms, she would still be able to itemize deductions or whether she would take the standard head-of-household deduction. Further, Schroeder's tax calculation was based on a gross income (\$278,000) much higher than her current actual gross income (about \$190,000). The income on Laura's 2015 federal tax return is much closer to her actual present income. Accordingly, we affirm the trial court's finding as to Laura's effective tax rate.

¶ 24 Finally, Laura argues that the trial court failed to implement our mandate because it did not include her additional lifestyle expenses in its maintenance determination. Laura argues that there was sufficient evidence of these expenses. She contends her additional lifestyle expenses add up to about \$3000 per month and that we should remand for the award to be adjusted or for further hearing on the amount of her additional lifestyle expenses.

¶ 25 Laura has not demonstrated that the trial court failed to implement our mandate. In *Turansick I*, 2018 IL App (2d) 170522-U, ¶ 44, we stated that the marital standard of living

included vacations, maintenance of the house in Lake Forest, the keeping of a horse, and a new car every few years. Belmonte-Newman's report included amounts for vacations, home repairs, and horse expenses. The trial court adjusted Belmonte-Newman's estimate of monthly living expenses to include a car payment. Belmonte-Newman also included amounts for the other expenses listed in Laura's additions to lifestyle report such as medical expenses, insurance, dining, and clothing. The trial court found Belmonte-Newman's estimate of monthly expenses to be commensurate with the parties' lifestyle during the marriage. On appeal, Laura has failed to point to any quantifiable evidence that would require us to find that the amounts set forth by Belmonte-Newman, and accepted by the trial court, were against the manifest weight of the evidence.

¶ 26 For example, in her appellate brief, Laura notes that two Brooks Brothers credit card statements were admitted into evidence. The two statements each showed a charge of \$50. This does not demonstrate that the trial court's reliance on Belmonte-Newman's clothing estimate of \$2500 per year was an abuse of discretion.

¶ 27 Laura also points out that Michael's financial affidavit included the costs for a health club, dining, and entertainment. Michael's costs for dining and entertainment are not sufficient to find the trial court's reliance on Belmonte-Newman's report as an estimate of the marital expenses for those items to be improper. Further, while the evidence showed that a health club membership was part of the marital standard of living, Laura never directed the trial court to Michael's financial affidavit for the cost of such a membership. On remand, Laura argued only that the trial court should use its reasonable everyday life experiences in determining how much to allow for such an expense. She argued the same with respect to the amounts for antiques and technology set forth in her additions to lifestyle report. On appeal, while Laura has cited cases for the proposition that a trial court can estimate such expenses, she has not cited any case law

indicating that a trial court must do so. Accordingly, we cannot say the trial court erred in not adding amounts for a health club membership, antiques, and technology to Laura's monthly living expenses.

¶ 28 Finally, we note that, during the 2017 hearing on Laura's petition to permanently extend and increase maintenance, Laura attempted to submit evidence regarding the costs of the parties' vacations during the marriage. However, the trial court sustained an objection to such evidence, finding that 2017 costs of vacation destinations were not necessarily comparable to the costs of the parties' marital vacations. During the hearing after remand, Laura stated that there was enough evidence in the record for the trial court to determine the costs of her additional lifestyle expenses, including vacations, but suggested that the trial court could hold an evidentiary hearing if it needed more evidence. The trial court did not hold an evidentiary hearing and Laura never moved to enter the objected-to evidence of the parties' vacation costs into the record. A statement that the trial court could hold an evidentiary hearing if it wanted is not the same as a specific request to submit additional evidence. Laura has failed to demonstrate that Belmonte-Newman's estimate of her vacation expense, and the trial court's reliance on it, was erroneous. Accordingly, Laura's argument that the trial court failed to implement our mandate is without merit.

¶ 29 **CONCLUSION**

¶ 30 For the foregoing reasons, we affirm the trial court's tax rate determination and hold that the trial court properly implemented our mandate. We reverse the finding as to Laura's employment income. In determining the proper amount of maintenance, the trial court should have considered Laura's employment income to be \$28,000 per year or \$2333 per month. We therefore modify the final judgment pursuant to our authority under Supreme Court Rule 366(a)(5) (155 Ill.2d R. 366(a)(5)) by increasing the amount of maintenance to \$14,334 per

month. We remand for a determination of the proper amount of arrearages that remain to be paid.

¶ 31 Affirmed as modified and remanded.