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2019 IL App (3d) 170840-U

Order filed July 19, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

In re MARRIAGE OF DEBRA M. GRIMM,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Petitioner-Appellee,)	Tazewell County, Illinois.
)	
and)	Appeal No. 3-17-0840
)	Circuit No. 08-D-273
THOMAS L. GRIMM,)	
)	The Honorable
Respondent-Appellant.)	Thomas A. Keith,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in (1) using new statutory guidelines to calculate duration and amount of maintenance award to ex-wife, and (2) making maintenance award retroactive to filing date of ex-wife's petition to review and extend maintenance.

¶ 2 Petitioner Debra Grimm and respondent Thomas Grimm divorced in 2010. In 2011, the trial court entered an order requiring Thomas to pay child support, as well as \$325.00 per month in maintenance to Debra. In November 2015, Thomas filed a petition to modify maintenance. Three months later, he filed a petition to modify child support and a petition to terminate

maintenance. In June 2016, Debra filed a petition to review and extend maintenance. Following a hearing, the trial court entered an order denying Thomas' petitions and granting Debra's petition. Using the new statutory guidelines set forth in section 504(b-1)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(b-1)(1) (West 2016)), the trial court ordered Thomas to pay monthly maintenance of \$1,611.67, retroactive to February 2, 2016. On appeal, Thomas argues that the trial erred in (1) determining the amount and duration of maintenance, and (2) making the maintenance award retroactive to February 2016. We reverse and remand.

¶ 3

FACTS

¶ 4

Debra and Thomas Grimm married in 1988. They had three children together: Evan, born in 1991; Aaron, born in 1997; and Ethan, born in 1999. Debra filed a petition for dissolution of marriage in 2008. In June 2010, the trial court entered its judgment for dissolution. In October 2011, the trial court entered a supplemental judgment for dissolution, requiring Thomas to pay biweekly child support of \$478.00 for the two minor children and \$325.00 per month in maintenance to Debra. The order instructed Debra to "pursue her career in medical coding or find equivalent or better employment than presented by that chosen career path."

¶ 5

On November 5, 2015, Thomas filed a petition to modify maintenance. On February 2, 2016, Thomas filed a petition to modify child support. On February 8, 2016, Thomas filed a motion to terminate maintenance and an amended petition to modify child support. On March 12, 2016, the court entered an order reducing Thomas' child support obligation to \$466.33 biweekly. On June 9, 2016, Debra filed a petition to review and extend maintenance.

¶ 6

In October and November 2016, the court held hearings on the parties' outstanding motions and petitions. At the hearing, Debra testified she is 56 years old and has a high school education. She lives in the former marital residence with two of her children: Aaron, who is

attending community college, and Ethan, who is a high school student. She works as a server at Cracker Barrel and has done so for the past eight years. She works 25 to 40 hours per week and earned approximately \$21,000 in 2015.

¶ 7 Prior to the divorce, Debra was primarily a stay-at-home mother. She completed a medical coding class in April 2010. She took her certification exam in August 2011, but failed it “miserably,” with a score of approximately 27%. She never retook the exam and did not seek additional training in medical coding because she was not good at it. She testified that she would have earned \$10.00 to \$11.00 an hour in the field of medical coding. She currently earns approximately \$15.00 an hour, including tips, as a server at Cracker Barrel.

¶ 8 Debra’s father passed away in December 2011. She is to receive one-third of his estate, consisting of farmland valued at approximately \$300,000, which earns yearly income of \$5,000, as well as cash of approximately \$100,000 from the sale of salvage items. At the time of the hearing, Debra had received only \$5,000 from her father’s estate. She had no idea when she will receive another distribution of assets from the estate. She also inherited her father’s retirement account, which had a value of \$21,531.00 at the time of his death and generates yearly income of \$600.00 to \$700.00, which she reinvests into the account. Debra plans to use that account for her retirement. She has no other retirement accounts.

¶ 9 Thomas has a master’s degree in business administration, which he earned during the marriage. He works as director of operations for Dunlap School District. He earns an annual salary of \$85,850. In 2011, he was earning \$53,000 a year as a project manager for Mangieri Construction Companies. His salary had increased to \$75,000 by 2015. In 2015, he was laid off and started working for the school district after being unemployed for only 11 days. Thomas also

earns income from farm rent and gambling winnings, which he did not include on the financial affidavit he filed with the court.

¶ 10 On June 12, 2017, the court entered an order denying Thomas' petitions to modify and terminate maintenance and granting Debra's petition to review and extend maintenance. The trial court used the new statutory guidelines in section 504(b-1)(1) of the Act (750 ILCS 5/504(b-1)(1) (West 2016)) to determine the amount of maintenance Thomas should pay. Based on the guidelines, the court ordered Thomas to pay Debra maintenance of \$1,611.67 per month. The maintenance award was indefinite and reviewable upon a substantial change of circumstances. The award was retroactive to February 2, 2016. The trial court also reduced Thomas' child support obligation, effective February 2, 2016, to \$737.33 per month for the parties' one remaining minor child.

¶ 11 Thomas filed a motion to reopen the proofs and a motion to reconsider. The trial court denied the motions but modified the maintenance award, changing it from an indefinite term to a term of 16 years, beginning on August 11, 2011.

¶ 12 ANALYSIS

¶ 13 I.

¶ 14 Thomas argues that the trial court abused its discretion in ordering him to pay maintenance of \$1,611.67 per month to Debra. He contends, in part, that the trial court erred in applying the new statutory guidelines to calculate the amount of maintenance.

¶ 15 Typically, the amount of a maintenance award rests within the sound discretion of the trial court and will not be disturbed on review absent an abuse of that discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). However, where, as here, a party argues that the trial court relied on an improper statutory provision to determine the amount of maintenance, the

issue involves a matter of statutory construction, which we review *de novo*. See *In re Marriage of Kuper*, 2019 IL App (3d) 180094, ¶ 28.

¶ 16 Section 510 of the Act governs the modification and termination of maintenance. 750 ILCS 5/510 (West 2016). Section 510(a-5) provides that in all proceedings in which maintenance is being reviewed, the court shall consider nine enumerated factors, as well as “the applicable factors set forth in subsection (a) of Section 504[.]” *Id.* § 510(a-5). Section 504(a) of the Act lists 14 factors a court must consider in determining whether a maintenance award is appropriate. *Id.* § 504(a).

¶ 17 The Act’s maintenance provisions have undergone dramatic changes in recent years. *In re Marriage of Kasprzyk*, 2019 IL App (4th) 170838, ¶ 28. In 2010, when the parties’ marriage was dissolved, the 2006 version of section 504 applied. See 750 ILCS 5/504 (West 2010). Under that version, a trial court considered the factors of section 504(a) to determine the amount and length of maintenance. *Id.* § 504(a). At that time, there were no statutory guidelines setting a duration or amount. See *id.*

¶ 18 In 2015, the legislature substantially amended section 504 of the Act, by adding subsection (b-1), which sets guidelines for the amount and duration of maintenance once the court deems a maintenance award appropriate. See *Kasprzyk*, 2019 IL App (4th) 170838, ¶ 28 (citing Pub. Act 98-961, § 5 (eff. Jan. 1, 2015) (amending 750 ILCS 5/504)). Under the new version of section 504, the trial court considers the section 504(a) factors only to ascertain whether maintenance is appropriate. *Id.*; 750 ILCS 504(a) (West 2016)). Once the court determines that maintenance is appropriate, subsection (b-1)’s guidelines “provide a means to calculate the amount and duration of a maintenance award based on the length of the parties’ marriage.” *Kasprzyk*, 2019 IL App (4th) 170838, ¶ 28; 750 ILCS 5/504(b-1) (West 2016).

¶ 19 Here, the trial court used section 504(b-1) of the Act to determine the amount and duration of the maintenance award. This was error because section 504(b-1) “does not apply to post-dissolution maintenance modification[s] on review.” *Kuper*, 2019 IL App (3d) 180094, ¶ 28. The express language of section 510 directs courts to consider the factors contained in section 504(a) but makes no mention of the guidelines in section 504(b-1). See *In re Marriage of Harms*, 2018 IL App (5th) 160472, ¶ 30. “Had the legislature meant for the maintenance formula under section 504(b-1)(1) to be used to calculate modified maintenance amounts, it would have referred to the section 504(b-1)(1) formula in section 510(a-5) along with the direction to the section 504(a) factors.” *Kuper*, 2019 IL App (3d) 180094, ¶ 28. Because section 504(b-1)(1) of the Act does not apply to maintenance modification proceedings, the court should not have relied on that section’s guidelines to determine the amount and duration of the maintenance award.

¶ 20 Having found that the trial court erred in determining the amount and duration of maintenance in this case, we must determine the appropriate remedy. In *Harms*, the Fifth District held that it was unnecessary to remand a case when the trial court improperly applied the section 504(b-1)(1) guidelines in determining the amount or duration of maintenance. 2018 IL App (5th) 160472, ¶ 36. However, we ruled in *Kuper* that “the better approach is to remand this matter to the trial court for a determination of maintenance *** in an amount based on the factors set forth in section 504(a) rather than the inapplicable formula set out in section 504(b-1)(1).” *Kuper*, 2019 IL App (3d) 180094, ¶ 28. Thus, we reverse the trial court’s maintenance award and remand for further proceedings consistent with this decision.

¶ 21 II.

¶ 22 Thomas also argues that the trial court erred in making its maintenance order retroactive to February 2, 2016, the date he filed his petition to modify child support, rather than June 9, 2016, the date Debra filed her petition to review and extend maintenance.

¶ 23 Section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides: “[T]he 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 2016). Pursuant to the statute, “the earliest point to which retroactive modification of maintenance *** payments may be ordered is the date on which the non-moving party receives ‘due notice’ from the moving party of the filing of the modification petition.” *In re Marriage of Hawking*, 240 Ill. App. 3d 419, 426 (1992). Payments due before the filing of the petition for modification cannot be modified. *In re Marriage of Pettifer*, 304 Ill. App. 3d 326, 328 (1999). Section 510(a) of the Act “insures that the respondent is put on notice prior to the court ordering him to pay increased support.” *Id.*

¶ 24 Here, Thomas filed a petition to modify maintenance on November 5, 2015, and a petition to terminate maintenance on February 8, 2016. Debra filed her petition to review and extend maintenance on June 9, 2016. Based on the plain language of section 510(a) of the Act, the earliest point to which retroactive increased maintenance payments could be ordered is the date Debra filed her petition to review and extend maintenance. See 750 ILCS 5/510(a) (West 2016); *Hawking*, 240 Ill. App. 3d at 426; *Pettifer*, 304 Ill. App. 3d at 328. While Debra contends that the trial court could have made Thomas’ increased payments retroactive to November 5, 2015, the date Thomas filed his petition to modify maintenance, we find no support for this proposition, and Debra has provided none. Thus, we reject her argument. See *International Union of Operating Engineers Local 965 v. Illinois Labor Relations Board, State Panel*, 2015 IL

App (4th) 140352, ¶ 20 (party forfeits review of an issue on appeal by failing to support its argument with citation to authorities). On remand, the trial court must make its maintenance award retroactive to a date no earlier than June 9, 2016, the date Debra filed her modification petition.

¶ 25

CONCLUSION

¶ 26

The judgment of the circuit court of Tazewell County is reversed, and the cause is remanded.

¶ 27

Reversed and remanded.