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2019 IL App (3d) 180176-U

Order filed May 13, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
SUSAN RUETTIGER,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0176
	)	Circuit No. 12-D-1667
and	)	
	)	
MARK E. RUETTIGER,	)	Honorable
	)	David Garcia,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's order granting an ex-wife's petition to extend maintenance was affirmed because the trial court did not abuse its discretion in finding that further maintenance was appropriate and in applying the guidelines in determining the amount. The child support order was also affirmed.

¶ 2 The appellant former husband, Mark E. Ruettiger, appealed from a trial court order that granted the petition of appellee former wife, Susan Ruettiger, to extend maintenance and denied the husband's petition to reduce or suspend maintenance. The husband's motion to reduce child

support was granted, but he challenged the income determination upon which the trial court based the child support award.

¶ 3

### FACTS

¶ 4

A judgment of dissolution of the marriage of the husband and the wife was entered on May 8, 2014. The judgment incorporated a Marital Settlement Agreement (MSA). The MSA contained custody and property division provisions, and the husband was ordered to pay 32% of his net income as child support for the parties' three minor children. The issue of maintenance was reserved. The wife was awarded 55% of the marital portion of the husband's 401(k) account. Thereafter, the wife filed a motion for maintenance and attorney's fees. After a hearing, the trial court entered an order requiring the husband to pay \$1200 in maintenance to the wife for three years, retroactive to May 12, 2014, with the maintenance reviewable at that time. The husband was also ordered to pay 75% of the wife's attorney fees.

¶ 5

On December 12, 2016, the husband filed a motion to reduce child support and to reduce and/or suspend maintenance. The husband argued that child support should be reduced because one of the children was no longer a minor and because the husband was unemployed. The husband sought the reduction or suspension of maintenance based upon a substantial change in circumstances, namely, his unemployment. While that motion was pending, the wife filed a motion to continue and extend maintenance beyond the initial three-year period, requesting maintenance of \$1,200 a month for an additional 16 years.

¶ 6

The court held a hearing. The husband testified that he was a union pipefitter but that he had been essentially unemployed since November 2016 and receiving unemployment compensation of about \$612 a week. He was on a list with the union and would be called when jobs became available. In 2017, he worked on four jobs, for three different employers, making

approximately \$33,500 for approximately 11 weeks of work. The rest of the year, the husband received unemployment or did not receive payment at all, receiving total unemployment compensation of \$15,604. He also did occasional snowplowing. He testified that he had periods of unemployment as a pipefitter throughout his marriage, but the unemployment never lasted as long. The husband opined that it was due to the market crash in 2008. He testified that he no longer had health insurance, so the wife added the children to her health insurance around November 2017.

¶ 7 The wife testified that she was 49 years old and had a high school education. She stopped working just before their first son was born and did not work outside the home for the next 15 years of their marriage. After the divorce, the wife got a full-time job in the kitchen of a nursing home, making approximately \$10.50 per hour. Currently, she worked as an activity aide at the nursing home, making \$13 per hour. She did not plan to change jobs because of her age and because the job had good health benefits and a good retirement plan.

¶ 8 The wife testified that she and the children live with the wife's mother and stepfather, and the wife occasionally paid \$400 in rent. The wife testified that the 55% of the husband's 401(k) that she was awarded in the divorce decree had been spent. She recalled the total to be around \$18,000, and she paid \$9000 to her mother and stepfather to make arrangements for the wife and children to live at their home and she paid attorneys fees that the husband was ordered to pay. Subsequently, the husband was found in contempt and a supplemental order was entered, which conveyed to the wife another \$21,000 from the 401(k), which was to cover attorneys fees and the arrearage of maintenance that the husband owed to the wife. The wife's tax returns indicated \$21,300 in wages in 2014, \$25,000 in wages in 2015, and just under \$25,000 in wages in 2016.

The 2015 return also showed \$21,387 in pension and annuity distributions. The wife testified that the 2014 return was later amended to include the original pension distribution.

¶ 9 The court ordered the husband to pay child support in accordance with the statute based upon his average income in 2016 and 2017. The court also ordered maintenance based on the husband's average monthly income in 2016 and 2017, considered in conjunction with the wife's income, in accordance with the formula provided in section 504(b-1) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/504(b-1) (West 2016)). Specifically, the trial court stated: "And then the maintenance, I am going to—you take those two-year average and you put it in the statute with her income, and whatever it is it is. And I am going to make it reviewable in three years." There was no testimony regarding the husband's income in 2016. The trial court told the husband's attorney to prepare the order, basing child support and maintenance on the husband's average monthly income over those two years. The husband's attorney prepared the order, providing the husband's average monthly income in 2016 and 2017 of \$6244.83. Based on that, the court ordered maintenance of \$1441.48 per month for an additional three years, reviewable after that time, and reduced child support to \$895.76 per month. The court ordered adjustments in the event that the husband's net pay for any week was below \$1078.72. The husband appealed.

¶ 10 ANALYSIS

¶ 11 The husband argues that the trial court erred in applying the maintenance guidelines contained in section 504(b-1) of the Act (750 ILCS 5/504(b-1) (West 2016)) for the calculation of maintenance. The husband contends that the original maintenance award was based on the version of section 504 of the Act that was in effect in 2014. He contends that the current version of section 504 of the Act, which took effect on January 1, 2016, limited the applicability of

section 504(b-1) of the Act to original proceedings for maintenance. The wife argues that the trial court did not err in applying the new guidelines contained in section 504(b-1), it was not an abuse of discretion, and the award was equitable and just.

¶ 12 In this case, there were two motions pending before the court with respect to maintenance: the husband's motion to reduce or suspend maintenance and the wife's motion to continue and extend maintenance beyond the initial three-year period. The husband's motion to modify required a showing of a substantial change in circumstances, while the wife's motion was for review of maintenance in accordance with the trial court's order granting three years of maintenance. See 750 ILCS 5/510(a-5) (West 2016); *In re Marriage of Kasprzyk*, 2019 IL App (4<sup>th</sup>) 170838, ¶ 23. Although the trial court's order does not specifically state as much, the effect of the order was to grant the wife's motion and deny the husband's motion. We will only reverse a trial court's decision to award maintenance if it was an abuse of discretion. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390 (2008).

¶ 13 In reviewing an award of maintenance or considering a request to modify or terminate maintenance, a trial court should consider the factors delineated in sections 510(a-5) and 504(a) of the Act. 750 ILCS 5/504(a), 510(a-5) (West 2016); *In re Marriage of Kuper*, 2019 IL App (3d) 180094, ¶¶ 12, 13. Our review of the record indicates that there was not a showing of a substantial change in circumstances, so we find no abuse of discretion in the trial court's denial of the husband's motion. The husband continued to work as a pipefitter, and continued to be sporadically employed, as was customary in the field. The wife continued in her employment and living situation.

¶ 14 With respect to the wife's motion for review, the trial court considered the factors delineated in section 510(a-5) of the Act, as well as the factors delineated in section 504(a) of the

Act. The trial court considered the employment status of both parties and their respective efforts regarding employment. The trial court also considered the husband's recent inability to provide medical insurance for his children. The trial court considered the tax consequences of the maintenance payments. We find that the trial court considered the appropriate factors and did not abuse its discretion in extending temporary maintenance for an additional three years.

¶ 15 The amount of the maintenance award was based on the new statutory formula in section 504(b-1) of the Act, with no explanation for the increase in the amount of maintenance over the prior order. At the time the petitions were filed, the amount and duration provisions of section 504(b-1)(1) of the Act did not apply to postdissolution modifications. *Kuper*, 2019 IL App (3d) 180094, ¶ 28; but see *Kasprzyk*, 2019 IL App (4<sup>th</sup>) 170838, ¶ 38 (the version of the Act in effect at the time of the filing should apply). Subsequently, and prior to the trial court's decision, section 504 of the Act was amended to include section 504(b-8), which provides:

“Upon review of any previously ordered maintenance award, the court may extend maintenance for further review, extend maintenance for a fixed non-modifiable term, extend maintenance for an indefinite term, or permanently terminate maintenance in accordance with subdivision (b-1)(1)(A) of this Section.” 750 ILCS 5/504(b-8) (West Supp. 2017).<sup>1</sup>

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<sup>1</sup>Sections 510(a-5) and 504(a) of the Act were further amended, effective January 1, 2019, by Public Act 100-923, § 10. Section 510(a-5) of the Act now provides that “The court may grant a petition for modification that seeks to apply the changes made to Section 504 by this amendatory Act of the 100th General Assembly to an order entered before the effective date of this amendatory Act of the 100th General Assembly only upon a finding of a substantial change in circumstances that warrants application of the changes. The enactment of this amendatory Act of the 100th General Assembly itself does not constitute a substantial change in circumstances warranting a modification.” Pub. Act 100-923 (eff. Jan. 1, 2019) (amending 750 ILCS 5/510(a-5)). The amended section 504(a) makes its provisions applicable to proceedings for modification of a previous order for maintenance under section 510 of the Act. Pub. Act 100-923 (eff. Jan. 1, 2019) (amending 750 ILCS 5/504(a)).

Thus, we find no abuse of discretion in the amount of maintenance set by the court pursuant to section 504(b-1)(1)(A) of the Act.

¶ 16 The husband also argues that the trial court erred in setting a maintenance award that the husband was unable to pay. He argues that his current income was \$603 a week, and the trial court's order of \$332.64 per week in maintenance was over 50 percent of his income, when the wife's weekly income was only \$80 less, at \$520 per week. The husband's maintenance and child support obligation amounted to 89% of his unemployment compensation.

¶ 17 The wife contends that the husband only focuses on the change to his employment status and the consistency of his income but does not consider the change in circumstances of the wife having to provide medical insurance for the parties' three children. Also, the husband's career path necessarily provided episodic and inconsistent compensation, and the husband acknowledged the need to save money for the times when his income was interrupted. We find that the trial court did abuse its discretion in taking the average of the husband's income from the prior two years to determine his support obligations. See *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 104 (1995) (income averaging was appropriate due to income variation). The husband testified that he had other periods of unemployment throughout his career as a pipefitter, although none had lasted as long as the current period of unemployment.

¶ 18 The husband argues that the trial court erred in ordering maintenance and child support based partially upon his 2016 income, evidence of which was not contained in the record. The wife contends that the income was reflected in the exhibits that were admitted into evidence but then not included in the record on appeal. But, in any event, the amount of 2016 income was provided by the husband's attorney and not challenged by the wife.

¶ 19 The evidence in the record indicated that the husband's income in 2017 was approximately \$51,600. The trial court ruled that the husband's maintenance and child support obligations had to be based on the husband's average combined income for the previous two years: 2016 and 2017. The evidence in the record established that the husband was a union pipefitter and periods of work interspersed with periods of unemployment was not unusual. Although the wife argues that evidence of the husband's 2016 income was provided to the trial court, the exhibits that were admitted at trial, and were testified to, related to the husband's 2017 income. However, the husband's 2016 income was provided by the husband's attorney, and the wife has not objected to that amount. Even if we were to assume the amount was in error, the husband cannot complain on appeal about an error that he injected into the case. *In re Marriage of Eastburg*, 2016 IL App (3d) 150710, ¶ 14 (citing *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004)).

¶ 20 Lastly, the husband argues that the trial court should have terminated the maintenance award. The husband contends that the original maintenance award was a rehabilitative award and that the award had ceased having any rehabilitative function. The wife was not looking into any other job opportunities or education to become self-sufficient. We find that the maintenance was a temporary, but reviewable, award of maintenance, not rehabilitative maintenance. See *Kasprzyk*, 2019 IL App (4<sup>th</sup>) 170838, ¶ 45.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.