

No. 1-10-0034

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).

SIXTH DIVISION
JANUARY 21, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF MATTHEW EZEAGU,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
and)	Nos. 08 D 6568
)	08 D 7252
)	
ANDREA JONES,)	Honorable
)	Gerald C. Bender,
Respondent-Appellee.)	Judge Presiding.

JUSTICE R. E. GORDON delivered the judgment of the court.
Justices Cahill and McBride concurred in the judgment.

O R D E R

HELD: Where the trial court's award of child support in an amount greater than allowed by statute included the court's reason for deviating from the statutory guideline, the maintenance award reflected the wife's educational goals, and the record offers no basis to disturb the court's award relating to wife's personal bankruptcy, those rulings did not constitute an abuse of the court's discretion; the trial court's judgment was affirmed.

Petitioner Matthew Ezeagu appeals the trial court's awards of child support and maintenance to respondent Andrea Jones. He further contends the court erred in ordering him to pay attorney fees in Jones's personal bankruptcy case. Although Jones has not filed a brief in this court, we can consider the merits of Ezeagu's appeal on his brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (such review allowable if record is simple and errors can be considered without additional briefing). We affirm.

Ezeagu and Jones were married in February 2006, and their child, Matthew, was born in July 2007. The parties separated in December 2007, and in 2008, each filed for dissolution of the marriage. Ezeagu's petition stated he was 48 years old and was employed as a cab driver.

In August 2008, the trial court granted Jones's request for temporary child support, ordering Ezeagu to pay \$186 per week in child support and \$60 per week in day care expenses. The following month, Jones asked the court to hold Ezeagu in contempt for failing to pay those costs. Jones also filed a petition seeking interim attorney fees incurred in the divorce proceeding, which Ezeagu later challenged as insufficient. A financial disclosure accompanying that petition indicated Jones's 2007 gross income was \$14,300 from working at a retail store.

In October 2008, the court granted Ezeagu's motion to vacate its order of \$186 in weekly child support, finding the August 2008 order did not state Ezeagu's income on which a support amount was to be determined.

In March 2009, Jones, now acting *pro se*, filed a motion for "temporary relief," including child support, medical insurance and day care expenses. In April 2009, after hearing testimony, the court ordered Ezeagu to pay child support of \$125 per week.

In August 2009, Jones filed another motion requesting temporary relief, stating she was still owed previously unpaid child support from October 2008 to April 2009. Jones also asked that Ezeagu be ordered pay attorney fees related to her bankruptcy. Ezeagu filed a written response to Jones's petition. A hearing on Jones's petition was set for September 2009. The trial court denied Jones's petition with prejudice after she did not appear.

On November 10, 2009, the court held a hearing on the issues of child support and the division of property. Among other testimony, Jones stated she was working as a nurse's aide, earning about \$12,000 per year, and she planned to attend nursing school the following January. Jones orally requested that Ezeagu pay a \$450 balance owed in her bankruptcy case. Based on financial statements, the court determined Ezeagu's income was

about \$1,900 per month, including income from two taxicab medallions he leased to other drivers.

The court ordered Ezeagu to continue paying child support of \$125 per week. The court's written order specified that although statutory guidelines required child support of \$382.40 per month (approximately 20% of a \$1,900 monthly income), the court ordered the greater amount of \$125 per week because Jones's annual income was only \$12,000. The court also ordered Ezeagu to pay \$300 in monthly maintenance to Jones for two years (until December 2011) and pay the \$450 bankruptcy attorney fees. Ezeagu now appeals those rulings.

Ezeagu first challenges the amount of the child support payments ordered by the court. He contends the court erred in ordering him to pay \$125 per week, which exceeded the statutory amount, without making a finding as to the child's needs or his ability to pay that sum.

Section 505(a)(1) of the Marriage and Dissolution Act (the Act) (750 ILCS 5/505(a)(1) (West 2008)) governs child support and sets forth guidelines for determining the "minimum amount of support," which, for one child, is 20% of the supporting party's net income. The statutory support guidelines apply "unless the court makes a finding that application of the guidelines would be inappropriate" when considering a variety of factors that include

the financial resources and needs of both the custodial and non-custodial parent. 750 ILCS 5/505(a)(2)(b), (e) (West 2008).

The trial court must make express findings if it deviates from the statutory guidelines. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). When making such a deviation, the court's finding "shall state the amount of support that would have been required under the guidelines, if determinable" and "shall include the reason or reasons for the variance from the guidelines." 750 ILCS 5/505(a)(2) (West 2008). The determinations of net income and the amount of a child support award lie within the trial court's sound discretion. *Einstein v. Nijim*, 358 Ill. App. 3d 263, 267 (2005).

Ezeagu argues the court did not hear evidence to warrant the support amount higher than the 20% statutory guideline. In setting child support at \$125 per week, the following exchange occurred between the court and Ezeagu's attorney:

THE COURT: "You'll continue the same order. \$541 a month, payable \$125 a week. It's over the guidelines but -

COUNSEL: There's no finding why it should be.

THE COURT: I'm going to make a finding. She needs the money. She's absolutely destitute.

COUNSEL: Just because she's crying -

THE COURT: No. She's destitute. I don't believe everything about your income. It sounds preposterous. She's almost at poverty. Poverty is \$13,000 a year. She's at poverty. She makes poverty and you're paying, so pay it."

The court's written order setting child support of \$125 per week complied with the requirements for deviating from the statutory guidelines. The order stated the amount of child support required by statute (\$382.40 per month) and explained that a greater amount was being awarded due to Jones's \$12,000 annual income. Moreover, in determining a party's income, the court may consider the party's credibility and forthrightness in disclosing his or her income. *Sweet*, 316 Ill. App. 3d at 109. The court did not abuse its discretion in setting the amount of child support on a basis permitted by section 505(a), i.e., Jones's financial resources and needs as the custodial parent. See 750 ILCS 5/505(a)(2)(b) (West 2008).

Ezeagu next challenges the court's award of temporary monthly maintenance of \$300 per month to be paid until December 2011. He argues the marriage lasted only two years and they were separated for half that time.

Maintenance awards, whether temporary or permanent, must be reasonable, and the reasonableness of an award depends on the facts of the particular case. *In re Marriage of Heroy*, 385 Ill.

App. 3d 640, 652 (2008); *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1002 (2008). A trial court's determination as to the awarding of maintenance is presumed to be correct and will not be disturbed absent an abuse of discretion, and it is the burden of the party challenging the maintenance award to make that showing. *Heroy*, 385 Ill. App. 3d at 650-51.

Section 504 of the Act sets out 12 factors for the trial court to consider in awarding maintenance; those considerations include each party's income and property, needs, and present and future earning capacity. 750 ILCS 5/504(1), (2), (3) (West 2008). No single factor is determinative when considering the duration and amount of a maintenance award. *Heroy*, 385 Ill. App. 3d at 651. While the duration of the marriage is one factor in awarding maintenance (750 ILCS 5/504(7) (West 2008)), another factor is "the time necessary to enable the party seeking maintenance to acquire appropriate education, training and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment." 750 ILCS 5/504(5) (West 2008).

The trial court made the following remarks in setting maintenance:

"I'm reviewing the maintenance statute under section 504, and I'm thinking

about the income and the property, including marital property. She basically has no marital property. Her needs are sufficient, although she is taking care of two other children besides [from a prior relationship]. He has a greater earning capacity than she has, because he has a business with the cabs. She has an inability, an impairment of future earnings because she still has to support three children. And the other factors [in section 504], the standard of living established during the marriage, the short duration of the marriage. The marriage was only two years. A two-year marriage."

Citing additional factors set out in section 504, the court continued:

"Taking into consideration the physical, emotional condition of the parties and their age, the record shows *** he was born in 1961. She was born in 1970, and the other factors, I'm going to award her \$300 a month maintenance for two

years, terminable. You ought to be out of school by then."

As those comments indicate, the trial court expressly considered the brevity of the parties' union and Jones's plans to attend school, along with other circumstances as warranted by section 504. Ezeagu argues maintenance was not required because no evidence was presented that Jones delayed her education to assist in or advance his own career. The Act allows for rehabilitative, time-limited maintenance to provide the incentive to diligently pursue the training or education required to gain employment and self-sufficiency. *Brown v. Brown*, 241 Ill. App. 3d 305, 310 (1993). Although Ezeagu contends the court did not consider his ability to pay maintenance, the court noted his income was greater than that of Jones. The trial court did not abuse its discretion in awarding maintenance of \$300 per month for two years.

Ezeagu's remaining contention on appeal is that the court erred in ordering him to pay \$450 owed in Jones's personal bankruptcy case. Early in these proceedings, Jones filed a motion asking that Ezeagu be ordered pay her attorney fees pursuant to section 508 of the Act (750 ILCS 5/508 (West 2008)) due to the disparity in their incomes. That fee request did not mention Jones's bankruptcy case.

As the colloquy quoted below illustrates, Ezeagu's attorney did not question Jones on this point or raise any objection to her request to be compensated for costs or fees relating to her bankruptcy proceedings. Therefore, Ezeagu has waived the ability to now contest that ruling.

At the hearing, Jones made the following remarks to the court:

"MS. JONES: Besides me needing maintenance, just to help our family come out of this hole we're in, I filed bankruptcy. I asked him to pay. I need him to pay the bankruptcy off so I can start my life all over again.

THE COURT: What does that mean? Pay lawyer's fees?

MS. JONES: The filing fee. It's a remaining balance of [a] \$450 filing fee. I paid that. I paid \$500. I'm still -

THE COURT: Who do you owe money to?

MS. JONES: Legal Helpers. I filed with Legal Helpers, retaining fee, and I also continued to pay \$550 - fifty dollars. I owe \$450 for the remaining balance so that my bankruptcy can be started, so they can start my bankruptcy now. It's just filed.

THE COURT: How much is that? Five hundred dollars?

MS. JONES: Altogether, \$950.

THE COURT: How much do you owe?

MS. JONES: \$450.

THE COURT: What are you going on bankrupt? On bills?

MS. JONES: I was bankrupt. I went on my lawyer's fees, because I owed my lawyer \$18,000 that -

THE COURT: What lawyer?

MS. JONES: My lawyer that withdrew from my case."

Near the end of the trial, this exchange took place between Jones and the trial judge:

"MS. JONES: What about my bankruptcy?

THE COURT: How much do you owe on the bankruptcy?

MS. JONES: \$450.

THE COURT: And he's going to pay off - He's going to pay off the \$450. That was a debt, wasn't it?

MS. JONES: For bankruptcy. It's \$350."

Ezeagu directs our attention to section 508 of the Act, under which a court can award attorney fees to a party in a dissolution case. 750 ILCS 5/508 (West 2008). Section 508

permits recovery of attorney fees that were incurred in a proceeding "that has as its goal the enforcement of an order or judgment entered in a dissolution proceeding." *In re Marriage of Kent*, 267 Ill. App. 3d 142, 144 (1994) (trial court had jurisdiction to consider award of attorney fees incurred by wife's attorney in enforcing dissolution property settlement in bankruptcy case filed by husband to discharge husband's debts and obligations). Such fees can be awarded only after notice and a hearing. 750 ILCS 5/508(a) (West 2008). However, it does not appear that section 508 governs this issue, because from the discussions set forth above, it is unclear whether the money Jones owed to Legal Helpers was a filing fee or cost or an attorney fee. Other than Jones's verbal assertions, the record lacks any documentation of the bankruptcy proceeding or a characterization of the amount owed and its sum.

The final remark of the trial court that is quoted above suggests the court treated the amount as a debt to be paid by Ezeagu. Debts incurred by one party following a separation may be considered marital, and although the party incurring the debts can be held responsible to pay them, it is within the trial court's discretion to order that the debts be paid by the other party. *In re Marriage of Stufflebeam*, 283 Ill. App. 3d 923, 929 (1996); see also *In re Marriage of Moll*, 232 Ill. App. 3d 746,

756 (1992) (overall circumstances of parties also appropriate consideration in apportioning debt).

On this record, we have no basis to conclude the trial court abused its discretion in ordering Ezeagu to pay the amount owed in Jones's bankruptcy case. "A trial court abuses its discretion when it acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reasons and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Haken*, 394 Ill. App. 3d 155, 160 (2009). Put more simply, an abuse of discretion occurs only when no reasonable person could find as the trial court did. *In re Marriage of Getautas*, 189 Ill. App. 3d 148, 153 (1989). We have no basis to disturb the trial court's ruling on that point.

In conclusion, the trial court's orders that Ezeagu pay \$125 per week in child support, \$300 per month in temporary maintenance, and the amount relating to Jones's bankruptcy did not constitute an abuse of the court's discretion. Accordingly, the judgment of the trial court is affirmed.

Affirmed.