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No. 3-09-0660

Order filed March 3, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

IN RE MARRIAGE OF)	Appeal from the Circuit Court
CINDY A. DEWAELE,)	for the 14th Judicial Circuit,
)	Rock Island County, Illinois
Petitioner-Appellant,)	
)	
v.)	No. 08-D-456
)	
HOWARD E. DEWAELE)	Honorable
)	Alan G. Blackwood,
Respondent-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice McDade specially concurred.

ORDER

Held: The trial court erred in denying Cindy's motion to continue the dissolution proceedings as she had recently retained new counsel and the record establishes that neither Cindy nor her counsel was sufficiently apprised as to protect Cindy's interests.

Petitioner Cindy DeWaele petitioned for the dissolution of her 20-year marriage to respondent Howard DeWaele. At the bifurcated trial on custody issues and property distribution, Cindy's attorney sought a motion to continue because he had recently been retained and was unprepared to proceed. The trial court denied Cindy's motion to continue and the trial ensued. In

apportioning the marital property, the trial court, in part, awarded Howard his 401K in its entirety and ordered him to make a \$20,000 lump sum payment in lieu of maintenance to Cindy. She was ordered to pay the couple's substantial credit card debt. She appealed. We reverse and remand.

FACTS

Cindy DeWaele and Howard DeWaele were married in 1988. The couple had two children. At the time of the dissolution proceedings, their daughter was of age and their son was 17 years old and a senior in high school. When the parties married, Cindy was receiving worker's compensation from her employer, the United States Postal Service (USPS) and she did not work throughout the parties' marriage due to various medical conditions. Cindy's worker's compensation benefits were ultimately rescinded and she was required to pay back out of her postal pension \$84,000 in benefits she wrongfully received.

Cindy filed for dissolution of marriage in August 2008. The financial affidavit she filed at that time indicated she had no monthly income and monthly expenses in the amount of \$2,025, owned a non-marital house with a value of \$50,000, a life insurance policy worth \$50,000, and two cars, a 1996 Buick Skylark worth \$1,500 and a 2008 Toyota Yaris worth \$15,000 on which she owed \$12,000. Howard's financial statement, filed in September 2008, indicated he had a monthly gross income of \$3,600 with a net monthly income of \$2,737, and expenses of \$2,803; owned five certificates of deposits (CD) entitled in his name with a total value of \$85,000; had a checking account balance of \$1,200 and a savings account balance of \$30,000, a \$60,000 401K account, a \$60,000 life insurance policy, and a Chevrolet truck worth \$500 and a Chevrolet Cavalier worth \$1,500. His affidavit indicated that the funds in the CDs were non-marital in that they were gifted to him by his parents or received as an inheritance from his father's estate.

The trial court entered an order in September 2008 awarding Cindy temporary custody and child support of \$150 per week, \$100 per week in maintenance and a \$2,500 advance on the property settlement. On November 25, 2008, Cindy's attorney filed a motion to withdraw in which he stated that Cindy had "failed and refused to listen to [and] cooperate with counsel in a timely manner and the attorney-client relationship has totally broken down." At a December 9, 2008, hearing on the motion, the trial court allowed counsel to withdraw and issued an order which provided that Cindy "shall be allowed 21 days to hire new counsel." A case management conference was continued until January 13, 2009, to allow Cindy to obtain new counsel. At the January 13 case management conference, trial was set for April 22, 2009. The only record from the January 13 conference was the trial date order which was not signed by Cindy or her attorney.

Howard amended his financial affidavit in April 2009, indicating that his gross monthly income had increased to \$3,739, his monthly net income to \$3,005, and his monthly expenses to \$3,028, and his savings account balance decreased to \$25,000 and his 401K to \$59,000. He also filed a pretrial memo in which he stated that he sought a \$25,000 credit for his contribution to the mortgage payments and that Cindy should pay the credit card debts which amount was not known. He acknowledged that his 401K was marital but argued that it should offset his contributions to the mortgage.

On April 22, 2009, the day of trial, new counsel for Cindy filed his appearance and a motion to continue in which he argued he had just been retained and that Cindy did not "think we were properly prepared." Cindy's attorney stated that he had only been "in the case" for "like three weeks" and was on vacation for one of them. Howard's counsel objected and the following exchange ensued.

“THE COURT: The Court notes that on December 9, which is one, two, three, four months ago, her attorney was allowed to withdraw, and her not bothering to do much until recently does not –

[CINDY]: I couldn’t because I didn’t have the money.

THE COURT: It’s not very persuasive to me. I don’t like, [Cindy’s counsel], putting you in that position. I understand that. But motion for continuance is denied.”

The trial court proceeded with what it characterized as agreed issues. After the presentation of the issues, the following colloquy took place:

“THE COURT: [Cindy’s counsel], is that the understanding of you and your client as to the matters that have been agreed to and as to the matters that remain in dispute?

[CINDY’S COUNSEL]: My client’s shaking her head no, so I guess not.

[CINDY]: I didn’t know anything about any of this. I haven’t had an attorney.

THE COURT: [Cindy’s counsel], have you been talking with her this morning?

[CINDY’S COUNSEL]: Yes, I have.

THE COURT: Have you gone over with her each of the things that [Howard’s attorney] just said?

[CINDY'S COUNSEL]: Yes.

[CINDY]: I just got him yesterday.

THE COURT: I know, I --."

Following testimony by Cindy and Howard, the trial court made the following property distribution and entered a judgment of dissolution based on grounds previously determined. The trial court awarded custody of the couple's minor son to Cindy and ordered Howard to pay \$129 per week in child support. Cindy was awarded the house and seven cemetery lots. Each party was awarded their checking and savings in their individual names and Cindy was to receive the unknown proceeds in the parties' joint account. Cindy was awarded the Yaris and Skylark and Howard was awarded both Chevrolets. Each party received the personal and household property in his or her possession and the life insurance policies in their own names. Howard was ordered to provide insurance for the children. Each party was ordered to pay the debts in their individual names. Cindy was ordered to repay the USPS for the improper worker's compensation benefits she received and was awarded any remaining interest in her USPS pension. Howard was awarded his non-marital CDs with a value of \$85,000 and 100% of his 401K, and ordered to pay Cindy \$20,000 as a lump sum maintenance award and \$800 as one-half of the couple's income tax refund.

Cindy timely filed a motion to reconsider in which she argued that the trial court failed to consider \$20,000 in debt incurred during the marriage "due to the fact that Petitioner's newly retained counsel did not have time to prepare," that the trial court failed to equitably divide Howard's 401K and that the trial court inappropriately awarded Cindy a lump sum maintenance award. In his response to Cindy's motion to reconsider, Howard argued that the dissolution action was "on file" for more than a year and that Cindy's failure to timely obtain counsel was "at her own peril"; that

the \$20,000 credit card debt was incurred by Cindy after the parties' separation; that the award to him of his entire 401K offsets the award to Cindy of all the equity in the non-marital house; that the lump sum maintenance award was not in error and that because Cindy accepted its benefit, she cannot now argue it was error. The trial court denied the motion to reconsider and Cindy appealed.

ANALYSIS

On appeal, Cindy challenges the award to Howard of his entire 401K, the lump sum maintenance award to her in lieu of permanent maintenance, allocation to her of the entire credit card debt, and the denial of her motion to continue.

Because we find it dispositive, we will begin with the denial of Cindy's motion to continue. Cindy argues that the trial court erred in denying her motion to continue. She points to her retention of counsel the day before the trial and argues that it was unfair to her to require her to proceed at a time when neither she nor her new counsel were ready for trial.

Litigants do not have an absolute right to a continuance. *Rutzen v. Pertile*, 172 Ill. App. 3d 968, 974 (1988). A continuance may not be granted by the trial court after the cause has been reached for trial unless a sufficient excuse is shown necessitating the delay. Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970). A trial court may allow a continuance if required to permit counsel to further prepare. *Korbelik v. Staschke*, 232 Ill. App. 3d 114, 119 (1992). Where a continuance is requested to allow preparation of a case, the court must evaluate all surrounding facts and circumstances. *In re Marriage of Chesrow*, 255 Ill. App. 3d 613, 619 (1994). Where there is no reason for the substitution of counsel, a party should only be allowed sufficient time for counsel to prepare, not for each subsequent counsel to prepare. *Martinez v. Scandrolis*, 130 Ill. App. 3d 712, 715 (1985). A critical factor in determining whether to grant a continuance is whether the party showed diligence

in proceeding with the cause. *Martinez*, 130 Ill. App. 3d at 714. “ ‘[The] overriding consideration now is whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits.’ ” *Rutzen*, 172 Ill. App. 3d at 974 (citing *Patrick v. Burgess-Norton Manufacturing Co.*, 63 Ill. 2d 524, 527 (1976)). When the ends of justice are served by a continuance, the failure to grant one may be grounds for reversal. *Ullmen v. Dept. of Registration & Education*, 67 Ill. App. 3d 519, 522 (1978). A trial court’s decision to deny a motion to continue will not be overturned on appeal absent an abuse of discretion. *Chesrow*, 255 Ill. App. 3d at 618.

Cindy’s prior attorney was granted leave to withdraw in December 2008 and she was given 21 days to retain new counsel. The only record from the January 2009 case management is the order setting the trial date, which is unsigned by either Cindy or counsel. It is unclear whether Cindy attended the conference but it is apparent from the rest of the record that Cindy was without counsel at that time. The record is also unclear as to when Cindy retained new counsel. Counsel’s remarks on the motion to continue indicate he had been “on the case” for three weeks but was on vacation for one of those weeks. At the trial, Cindy stated that she “just got him yesterday.” The record does support that new counsel did not enter an appearance until the day of trial at which time he also filed a motion to continue which stated that he needed time to prepare. The trial court acknowledged the awkward position it was putting counsel in by requiring counsel to proceed, but nevertheless, denied the motion to continue.

The transcripts from the trial indicate that both Cindy and her new counsel were unaware of the status of the proceedings, particularly that there was apparently some agreement regarding property distribution and other issues. Cindy expressly complained that she was unaware of any

agreement because she did not have an attorney. We recognize that it was Cindy's responsibility to timely obtain new counsel and that the trial court ordered her to do so within 21 days of granting her previous attorney leave to withdraw. Cindy explained at the trial that she was unable obtain counsel any sooner because she lacked money to retain representation. The financial evidence presented in this case supports her explanation. In August 2008 when she filed for dissolution, Cindy had no income with monthly expenses of \$2,025, no liquid assets and minimal other assets, including her non-marital home and a \$50,000 life insurance policy. During her testimony, she informed the court that she began receiving social security benefits in November 2009 in the amount of \$674 per month. She owed \$84,000 reimbursement of worker's compensation benefits to the USPS and had what she claimed to be \$100,000 in credit card debt and \$50,000 in unpaid medical expenses. She owed \$12,000 on her vehicle. Under these facts, we cannot say that Cindy's delay in retaining counsel was due to a lack of diligence on her part. Given the importance of the issues before the trial court, we do not consider that Cindy would have voluntarily opted to be without representation. Rather, it appears on this record that she was without the funds to retain counsel.

We acknowledge that a party's financial difficulties or a substitution of counsel does not require the trial court to grant a continuance. However, under the facts and circumstances of this case, we find that the trial court's denial of Cindy's motion to continue deprived her of substantial justice and that it was unreasonable to compel her to go to trial with newly retained counsel. She stated she was unaware of the terms of the agreed issues because she had been without counsel and the dearth of evidence presented by Cindy's counsel supports his claim that he was unprepared to proceed with the trial. We hold that the trial court abused its discretion when it denied Cindy's motion for a continuance. Based on the resolution of this issue and the lack of sufficient evidence

in the record, we will not determine the other issues on appeal. Accordingly, we reverse and remand for a new trial on second-half issues.

For the foregoing reasons, the judgment of the circuit court of Rock Island County is reversed and the cause remanded.

Reversed and remanded.

JUSTICE McDADE, specially concurring:

The majority finds the trial court abused its discretion in denying Cindy's motion for continuance. Thus, the majority's decision reverses the trial court's order and remands the matter for new proceedings. I agree with the result reached by the majority, although on different grounds, as I do not believe the trial court abused its discretion in denying Cindy's motion to continue.

Here, the trial court's December 9, 2008, order allowing Cindy's original counsel to withdraw required her to file a supplemental appearance within 21 days. Cindy did not comply with this order. Instead, she waited more than four months – until the hearing date – before filing a supplemental appearance. Significantly, during these four months, she failed to inform the court of her claim that she could not secure or afford an attorney. When Cindy finally did inform the court of her alleged monetary issues on April 22, 2009, the court found her claims “not very persuasive.” While the majority has chosen to ignore this fact, I note that a trial court's credibility determinations are accorded great deference on appeal *In re Marriage of Barnes*, 324 Ill. App. 3d 514, 520 (2001).

Cindy violated the trial court's order dated December 9, 2008. Moreover, the record clearly reveals that she had adequate time to secure a new attorney, but failed to do so. “Abuse of discretion is only found if no reasonable person would decide as did the trial court.” *Selvy v. Beigel*, 309 Ill.

App. 3d 768, 774 (1999). After careful consideration and a thorough review of the record, I cannot say that the trial court abused its discretion in denying Cindy's motion for a continuance. Because I believe the trial court did not abuse its discretion in denying Cindy's motion for a continuance, I reach Cindy's other issues on appeal and find reversal and remand appropriate for the reasons that follow.

Initially, Cindy alleges that the trial court erred in awarding the 401K account solely to Howard. Apportioning a pension or 401K account in a marital dissolution is a three-step process. The trial court first determines the present value of the pension or account, second, ascertains the marital interest in the property, and, third, divides that marital interest, just as it would divide any other marital property. *In re Marriage of Walker*, 304 Ill. App. 3d 223, 226 (1999).

Although Howard contends that the record lacks sufficient evidence to determine the value of the 401K account, his amended financial disclosure statement lists its value as \$50,000. A financial affidavit is competent evidence of value. *In re Marriage of Block*, 110 Ill. App. 3d 864, 870 (1982). Thus, I find the value of the 401K account to be \$50,000.¹

Howard admits that all the assets in the 401K account were earned during the marriage. Thus, the 401K account is marital property subject to division. See 750 ILCS 5/503(a) (West 2008); *Walker*, 304 Ill. App. 3d at 226.

When dividing marital property, a trial court is to consider appropriate allocation in light of several factors set forth in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2008)). These factors include:

¹ I would be remiss if I did not note that it would be helpful, on appeal, if the trial court expressly assigned values to the property involved in a dissolution proceeding.

“(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non[]marital property *** including the contribution of a spouse as a homemaker or to the family unit;

(2) the dissipation by each party of the marital or non[]marital property;

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant circumstances of each spouse when the division of property is to become effective ***;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance; [and]

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income.” 750 ILCS 5/503(d) (West 2008).

A trial court’s decision on the ultimate distribution of marital property depends upon its view of the facts in conjunction with prevailing relevant statutory factors and its exercise of discretion in

this regard is accorded deference. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). We review its decision for abuse of discretion. *Vancura*, 356 Ill. App. 3d at 205.

Section 503(d) of the Act provides that marital property shall be divided in “just proportions” considering all relevant factors. 750 ILCS 5/503(d) (West 2008). “The touchstone of apportionment of marital property is whether the distribution is equitable in nature.” *In re Marriage of Schmidt*, 242 Ill. App. 3d 961, 966 (1993). Mathematical equality is not required as Illinois law holds that the term “just proportions” does not necessarily mean equal amounts. *Schmidt*, 242 Ill. App. 3d at 966; *In re Marriage of Caldwell*, 124 Ill. App. 3d 898, 901 (1984). “There is no obligation on the part of the trial court to make specific findings as to the reasons for its award.” *Schmidt*, 242 Ill. App. 3d at 966.

Here, Howard contends that the trial court’s “failure to award [Cindy] any share of the *** 401K [account] was not an abuse of discretion, given the property she was awarded.” Specifically, he calls our attention to the fact that Cindy was awarded the marital residence, a \$2,500 advance on her property settlement, vehicles, household furniture, her postal pension, and seven cemetery lots.

In assessing the distribution of assets in light of the requirement that it be equitable in nature, I believe the trial court abused its discretion in failing to award Cindy any interest in the 401K account. I note several factors in coming to this conclusion: (1) both the marital residence and the postal pension are Cindy’s non-marital assets², (2) Howard was awarded approximately \$210,000

² Howard’s amended financial disclosure statement lists the value of the marital residence as \$80,000. Neither parties’ financial disclosure statements list the value of Cindy’s postal pension. In fact, the postal pension is not even identified on any of the parties’ statements. While the trial court awarded Cindy the postal pension it did not assign it a value, but instead,

in what also appear to be non-marital accounts, (3) both parties were awarded certain vehicles, (4) Cindy's total monthly income consists entirely of \$674 in disability payments from Social Security, (5) Howard's gross monthly income is \$3,738, (6) the parties were married for approximately 21 years, (7) Cindy testified that she has not worked in approximately twenty years, (8) Cindy testified that she is currently unable to work due to her disability, which encompasses "two brain surgeries[,] *** a stroke and three aneurysms and five hematomas," (9) Cindy was held solely liable for what she testified was \$100,000 in credit card debt, all of which was acquired during the marriage, (10) Howard has no credit card debt, (11) Cindy was held solely liable for what she testified was approximately \$50,000 worth of medical debt, and (12) Cindy is approximately 11 years older than respondent.

In light of the above factors, I find the trial court's decision to award Howard the entire 401K account to be inequitable.³ I cite *Brackett v. Brackett*, 309 Ill. App. 3d 329 (1999) in support of this holding.

In *Brackett*, the respondent argued the trial court erred in failing to award her an interest in the petitioner's 401K account. After finding the petitioner's 401K account constituted marital property, the court stated:

"The trial court in this case recognized respondent's entitlement to 50% of the value of petitioner's pension. Yet, it did not

merely stated that Cindy "is awarded any remaining interest she has in any Postal Service Pension, free and clear of any right, title, or claim of interest on the part of the respondent."

³ I am aware that the trial court awarded Cindy \$20,000 in maintenance. I do not believe this fact alone, however, justifies awarding Howard the entirety of the 401K account.

award respondent a property interest in the pension. Rather, the trial court ordered petitioner upon entering pay status (some 15 or more years in the future) to provide maintenance from the proceeds of the pension in lieu of a property interest. This was erroneous as a matter of law and therefore an abuse of discretion.

The trial court was concerned that awarding a property interest in the pension to respondent could potentially deprive petitioner of the ability to support himself in the future. The trial court based its decision on the assumption that respondent would likely predecease petitioner. It did not want to see petitioner lose the benefit of the pension in that event. The trial court, however, failed to consider the opposite scenario -- the unlikely event that petitioner predeceases respondent. If that were to happen, respondent would be doubly deprived. Not only would she lose the benefit of the property interest in the pension but also she would lose any potential future maintenance. The obligation to pay future maintenance terminates upon the death of either party. [Citation.] We therefore remand this case for redistribution of the entire marital estate, including petitioner's pension. We note that our review of this case was considerably hampered by the lack of evidence of the actual cash value of the pension and the value of marital personal property. On remand, in order to achieve a just apportionment, the trial court

should require the parties to present evidence of the actual cash value of the pension as well as the value of the contents of the marital home. *Brackett*, 309 Ill. App. 3d at 339.

Cindy next contends that the trial court erred in awarding her a lump sum of \$20,000 in maintenance. Instead, she argues that she is entitled to permanent maintenance. I agree.

“Permanent maintenance should be awarded where a spouse is not employable or is only employable at a lower income as compared to the spouse’s previous standard of living.” *In re Marriage of Walker*, 4-07-0730 (Ill. App. November 26, 2008). “Limited maintenance is appropriate only where the spouse is employable at an income that would provide the approximate standard of living enjoyed during the marriage.” *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004). A trial court’s decision to award permanent or limited maintenance will not be overturned unless the court abused its discretion. *Walker*, 4-07-0730 (Ill. App. November 26, 2008). A trial court abuses its discretion when it awards limited maintenance where the facts are that one spouse is unable to support herself in the manner in which the parties lived during the marriage. *Selinger*, 351 Ill. App. 3d at 615.

Section 504(a) of the Act sets forth the following 12 factors for a trial court to consider in deciding whether to grant a maintenance award:

“(1) the income and property of each party, including marital property apportioned and non[]marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to the party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) 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;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a) (West 2008).

I find factors (1), (2), (3), (5), (6), (7) and (8) all support an award of permanent maintenance. Moreover, I stress that permanent maintenance is *necessary* where a spouse is not employable. *Selinger*, 351 Ill. App. 3d at 615. While Howard argues that Cindy failed to offer any evidence that she is disabled and unable to work, I note that she testified that she has not worked in approximately twenty years and is currently unable to work due to her disability. Cindy explained that she has had “two brain surgeries[,] *** a stroke and three aneurysms and five hematomas.” I also note that the Social Security Administration has found Cindy eligible to receive disability payments. In light of these facts, I find Cindy is not employable.

As a result of her disability, Cindy’s sole source of monthly income is a \$674 disability payment from Social Security. Howard, on the other hand, is employable and earns approximately six times more per month than what petitioner receives from Social Security. I also specifically note the extended 21-year length of the marriage. In light of these factors, I find the trial court’s failure to award Cindy permanent maintenance was a clear abuse of discretion. I again cite *Brackett* in support of this holding. Specifically, the court stated:

“Respondent’s entitlement to permanent maintenance is clear.

There is no doubt from the record that respondent suffers from multiple sclerosis, which renders her unable to be gainfully employed.

Petitioner's ability to pay permanent maintenance is equally clear. At the time of trial his annual salary was in excess of \$ 90,000 per year.

He had amassed a sizeable 401(k) account. His children’s college educations were provided for through wise investments. Upon retirement he will have a significant pension. Petitioner’s financial

situation juxtaposed to respondent's is staggering. Moreover, the marriage was *** [more than 20 years in duration]. We therefore hold that by awarding temporary maintenance the trial court abused its discretion.” *Brackett*, 309 Ill. App. 3d at 341-42.

Finally, Cindy contends that the trial court erred in failing to consider approximately \$20,000 in debt. She, however, has failed to offer us any evidence regarding this alleged \$20,000 debt. We do not know what type of debt it is or specifically how it was accumulated. Instead, Cindy simply makes the bald assertion that the trial court failed to consider “\$20,000 in debt that was incurred during the marriage due to the fact that Cindy’s newly retained counsel did not have time to prepare.” Cindy’s request to reverse that portion of the order dealing with credit card debt is not supported by argument in her brief. Such failure to raise and argue points in her brief serves to waive any error in respect to such order for purposes of review. *Riley v. Unknown Owners of 304 North Park Avenue Building*, 25 Ill. App. 3d 895, 897 (1975).

For the foregoing reasons, I would: (1) affirm that portion of the trial court’s judgment denying Cindy’s motion for continuance, (2) reverse that portion of the trial court’s judgment awarding Howard the entire 401K account, (3) reverse that portion of the trial court’s judgment awarding Cindy a lump sum of \$20,000 in maintenance and instruct the trial court to enter an appropriate award of permanent maintenance, (4) find that Cindy waived any argument regarding credit card debt, and (5) remand the matter for new proceedings.