2011 IL App (4th) 100657-U

Filed 10/05/2011

NO. 4-10-0657

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
JANET E. McARDELL,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
and	)	No. 05D25
GLENN M. McARDELL,	)	
Respondent-Appellant.	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court did not err by (1) denying the respondent's petition to modify maintenance and (2) ordering the respondent to contribute $1,963 toward the petitioner's attorney fees.

¶ 2 In February 2005, the trial court entered a written order that (1) dissolved the marriage of petitioner, Janet E. McArdell, and respondent, Glenn M. McArdell, and (2) incorporated the parties' property settlement agreement, in which they agreed, in pertinent part, that Glenn would pay Janet $1,700 per month in permanent maintenance.

¶ 3 In December 2009, Glenn filed a petition to modify maintenance, claiming that he was no longer employed and that Janet failed to make reasonable efforts to become self-supporting. Following two separate hearings on Glenn's petition, the trial court entered an August 2010 order, (1) denying Glenn's petition to modify maintenance and (2) mandating that Glenn contribute $1,963 toward Janet's attorney fees.

¶ 4 Glenn appeals, arguing that the trial court erred by (1) denying his petition to modify maintenance and (2) ordering him to contribute $1,963 toward Janet's attorney fees. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Parties' Dissolution of Marriage

¶ 7 In December 1981, Janet and Glenn married and later had two children. Both children are now adults. On February 14, 2005, Janet, age 42, filed a petition for dissolution of marriage from Glenn, age 43. That same day, the parties filed a property settlement agreement, providing, in part, that Janet would receive a 1999 vehicle, the parties' marital home, and 50% of Glenn's retirement and pension accounts. Glenn would receive his vehicle and the balance of his retirement and pension accounts. Glenn also agreed to pay approximately $5,000 in credit-card debt and be financially responsible for the educational expenses of the parties' children, which totaled approximately $45,000. The parties' agreement also included the following permanent maintenance settlement:

> "[Glenn] shall pay [Janet] as and for maintenance the sum of seventeen hundred dollars ($1,700) per month commencing February 1, 2005, with said maintenance to continue on a permanent basis and to terminate upon either parties' death or upon [Janet's] re-marriage or cohabitation with another person on a resident, continuing conjugal basis."

Nine days later, the trial court entered a judgment for dissolution of marriage, which incorporated the parties' property settlement agreement.

¶ 8 In December 2009, Glenn filed a petition to modify maintenance, alleging a substantial change in circumstances. In particular, Glenn claimed that (1) he was no longer employed and (2) Janet had failed to make a good-faith effort to become self-sufficient since their divorce. In January 2010, Janet filed her written response to Glenn's petition to modify maintenance, requesting that the trial court dismiss Glenn's petition and order him to pay the attorney fees and costs she had incurred "in connection with" that petition.

¶ 9 B. The Evidence Presented at the Hearings on Glenn's Petition To Modify Maintenance

¶ 10 In hearings conducted in June and July 2010, the parties presented the following evidence.

¶ 11 1. *Glenn's Testimony*

¶ 12 Glenn testified that he had worked as a full-time facilities manager for Caterpillar in Pontiac, Illinois, for 27 1/2 years before accepting a voluntary separation package in February 2009, which ended his employment with the company. Glenn provided the following rationale for his decision to accept Caterpillar's offer:

> "Well, at that particular time, the outlook at Caterpillar was very bleak; and they were offering voluntary separation packages to their management people as an incentive to clear some people out, because they knew that times were very tough[.]
>
> * * *
>
> *** I was informed that the outlook at Pontiac was very, very bleak. And I was told that, within a year, Pontiac would be down to a skeleton crew. Now, that's not the case, it didn't turn out that

> way; they’re doing pretty good right now because the new emission standards have not been enforced yet. So, Pontiac’s hanging in there; the outlook is still bleak. And I was also certain that my job would be one of the first jobs to be eliminated because of what I did at Caterpillar. I was electrical technical support, I was a luxury; and I left Caterpillar, and it was a very short time after I left that my entire department was eliminated. And it’s still eliminated to this day. There’s nobody left doing what I did at Caterpillar[.]"

¶ 13 The terms of Glenn's severance package provided him an incentive payment of $14,000 and a lump-sum severance payment of $96,196, which resulted in net proceeds of $63,000 after taxes were deducted. In addition, in November 2008 and January 2009, Glenn received the proceeds of a personal-injury settlement totaling $198,720. Glenn's tax returns showed that after his divorce from Janet, he earned the following gross income: $78,755 in 2005; $89,345 in 2006; $85,528 in 2007; and $88,469 in 2008, his last full year of employment with Caterpillar. In 2009, Glenn received a tax refund of $11,922.

¶ 14 Shortly after the parties' dissolution of marriage, Glenn began a relationship with Heather Collins, who is now his fiancée. For the past four years, Glenn lived with Heather in a home, titled in their name, with Heather's two children, ages 9 and 11. Heather was attending school full-time to become a physical therapist, which was being paid for by the United States government. Heather did not receive an income or child support. Glenn paid for the entirety of their living expenses.

¶ 15 Glenn's February 2010 financial affidavit showed that he did not earn a monthly income, and his monthly expenses totaled $5,194, which did not include a monthly health-insurance premium of $360. Glenn segregated his expenditures into the following categories: (1) $2,273 for living expenses, which included his mortgage, insurance, property taxes, utilities, and food expenditures; (2) $293 for transportation; (3) $111 for various medical costs; (4) $300 for dining and entertainment; (5) $232 for personal expenses, which included $182 for gifts; (6) $285 for Heather's children's expenses, identified as school, clothing, medical, lunches, and pet expenses; and (7) his $1,700 maintenance obligation. As of July 2010, Glenn's monetary assets included $4,500 in his financial accounts and $107,500 in his retirement accounts.

¶ 16 Glenn testified that in 2009, he spent $151,200 of the proceeds of his personal-injury settlement and severance package as follows: (1) over $50,000 for credit-card bills he and Heather had incurred since 2005; (2) $32,000 to pay off two vehicle loans; (3) $23,500 to pay off college loans; (4) $8,000 for a trip to Disney World with Heather and her two children; (5) $15,000 to refinance the mortgage; and (6) $22,700 for home remodeling and repair, which included (a) $3,500 to repair his garage roof, (b) $6,000 to repair his sunroom, (c) $2,000 to repair the living room floor, (d) $500 to replace the kitchen counter tops, (e) $2,000 to attach an outdoor deck on the house, (f) $4,000 for a generator, (g) $700 for a water purifier, (h) $1,000 to remodel the bathrooms, (i) $2,500 for tree removal, and (j) $500 to resurface the driveway. Glenn stated that the mortgage on the home he shared with Heather–which was approximately $73,000–was his only remaining debt.

¶ 17 Glenn acknowledged that he did not initially seek new employment, claiming that he was still recovering from his January 2008 automobile accident, although he had returned to

Caterpillar in August 2008, which was six months before he accepted Caterpillar's separation offer. Glenn joined several Internet job sites that sent him electronic mail daily, and he checked the local papers for job listings seeking electricians. In the months preceding the hearings, he had begun "seriously" seeking employment and had expanded his search throughout the country. Glenn sent out his first resume in January 2010 and had sent out approximately 12 resumes as of June 2010. His efforts produced a single phone interview for an out-of-state job that "didn't work out." Glenn intended to return to work and believed that he could earn $50,000 a year as an electrician in the local area "if he were really lucky." Glenn acknowledged that, as of July 2010, he had no job prospects, and he was not seeking employment outside of his electrical expertise. Glenn requested that his maintenance obligation be terminated because he had no income and "had paid enough."

¶ 18 2. *Janet's Testimony*

¶ 19 Janet, a high school graduate, testified that from 1992 until 2009, she worked part-time as a preschool teacher's assistant. After her divorce from Glenn, Janet (1) increased the number of classes she assisted every year and (2) worked as the preschool's custodian to earn additional income. Janet's tax returns showed that after her divorce from Glenn, she earned the following gross income: $13,800 in 2005; $14,388 in 2006; $15,021 in 2007; $16,744 in 2008; and $18,622 in 2009.

¶ 20 In May 2009, Janet surmised that she was earning the maximum allowed by the preschool. As a result, Janet terminated that employment and accepted a 35-hour per week job that paid her a gross monthly salary of $1,441 ($17,292 annually) and provided her retirement and health insurance benefits, unlike her preschool employer. Janet's new employer also

provided her the opportunity to increase her weekly hours and to achieve career advancement.

¶ 21 Janet's February 2010 financial affidavit showed that she earned a net monthly income of $2,473, which included Glenn's $1,700 maintenance obligation. Janet listed her monthly expenses at $2,587, which included the following monthly expenditures: (1) $1,570 for living expenses, which included her mortgage payment, insurance, property taxes, utilities, and food expenditures; (2) $335 for transportation, which included a $200 anticipated car loan payment to replace her aging vehicle; (3) $150 for various medical costs; (4) $200 for dining out and entertainment; and (5) $331 for personal expenses, which included $60 for gifts. Janet's assets included approximately $61,000 in her individual retirement account (which she received from Glenn as part of the settlement agreement), approximately $13,000 in certificates of deposit (CDs), and $19,000 in her savings account, which increased in value from $10,000 at the time of the divorce. Janet's mortgage balance was approximately $71,000.

¶ 22 3. *Testimony and Evidence Regarding Attorney Fees*

¶ 23 At the July 2009 hearing, Janet testified that she had incurred attorney fees in connection with Glenn's petition to modify maintenance. In support of her testimony, Janet proffered, and the trial court admitted, without objection, two exhibits, itemizing the attorney fees she incurred through June 22, 2010, which totaled $2,257. At the close of evidence, the following exchange then occurred:

> "THE COURT: So there's a stipulation as to the reasonableness of the [attorney] fees shown in [Janet's exhibits]?
>
> [GLENN'S COUNSEL]: That's correct."

¶ 24 4. *Trial Court's Ruling*

¶ 25 Thereafter, the trial court considered the relevant factors pursuant to sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a), 510(a-5) (West 2010)), finding, in part, as follows: (1) Glenn voluntarily terminated his employment; (2) Glenn voluntarily chose to support Heather and her two children; (3) Glenn's spending was extravagant; (4) Glenn did not make any concerted effort to find a job when he terminated his employment and only recently expanded his search; and (5) Janet accomplished everything that her education, training, and experience would allow and had done well for herself, but she was not at the point where she did not need maintenance.

¶ 26 The trial court then ordered Glenn to pay 75% of Janet's attorney fees, noting that Glenn did not have the "wherewithal or the obligation to pay the entire amount." Thereafter Janet's counsel stated that Janet had also incurred an additional $360 in fees for the July 2010 hearing, which brought the total amount to $2,617 in attorney fees. When asked by the court if he was confused by the new total, Glenn's counsel responded, "I don't think so. I need to take a look at it."

¶ 27 In August 2010, the trial court entered a written order, denying Glenn's petition to modify maintenance and mandating that he pay $1,963 toward Janet's attorney fees.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. The Trial Court's Denial of Glenn's Petition To Modify Maintenance

¶ 31 Glenn first argues that the trial court erred by denying his petition to modify maintenance. Specifically, Glenn contends that (1) his voluntary change in employment was

made in good faith and not contemplated to evade support payments and (2) Janet had failed to make a good-faith effort to become self-sufficient. We address Glenn's contentions in turn.

¶ 32 1. *The Applicable Statutes and the Standard of Review*

¶ 33 When determining whether to modify a maintenance order, the trial court must consider (1) the applicable factors set forth in section 504(a) of the Act and (2) the nine additional factors set forth in section 510(a-5) of the Act. *Blum v. Koster*, 235 Ill. 2d 21, 31-32, 919 N.E.2d 333, 340 (2009).

¶ 34 Section 504(a) of the Act sets forth the following applicable factors a trial court must consider prior to awarding temporary or permanent maintenance: (1) the income and property of each party; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of the present or future earning capacity of the party seeking maintenance; (5) the time necessary to enable the party seeking maintenance to acquire appropriate training and education; (6) the standard of living established during the marriage; (7) the duration of the marriage; (8) the age, physical and emotional conditions of each party; (9) the tax consequences of the property division; (10) contributions of the party seeking maintenance to the career of the other; (11) any valid agreement of the parties; and (12) any other factor the court expressly finds just and equitable. 750 ILCS 504(a) (West 2010).

¶ 35 Section 510(a-5) of the Act provides that a trial court may modify or terminate a maintenance award "only upon a showing of substantial change of circumstances." 750 ILCS 5/510(a-5) (West 2010). In making that determination, a court must consider the following applicable factors: (1) changes in the employment of either party and whether those changes were made in good faith; (2) the efforts the party receiving maintenance has made in becoming

self-sufficient; (3) any impairments to the earning capacity of either party; (4) the tax consequences of the maintenance payments as they relate to either party; (5) the duration of maintenance payments made relative to the duration of the marriage; (6) the property, including the retirement benefits, awarded to each party in the original judgment of dissolution; (7) changes to each party's income; (8) the property acquired and currently owned by each party since the judgment of dissolution; and (9) any other factors the court finds to be "just and equitable." *Id.*

¶ 36 The party seeking modification has the burden of showing that a substantial change in circumstances occurred since entry of the original maintenance award. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1003, 883 N.E.2d 535, 540 (2008). "The trial court's determination whether a substantial change in circumstances occurred is one of fact and will not be disturbed unless it is found to be against the manifest weight of the evidence." *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 821, 805 N.E.2d 743, 745 (2004), citing *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370, 669 N.E.2d 726, 729 (1996). We review for an abuse of discretion the court's ruling on a request to modify or terminate maintenance. *Reynard*, 378 Ill. App. 3d at 1003, 883 N.E.2d at 540.

¶ 37 2. *Glenn's Claims Regarding His Change of Employment*

¶ 38 Glenn first contends that the trial court erred by denying his petition to modify maintenance because his voluntary change in employment was made in good faith and not contemplated to evade support payments. We disagree.

¶ 39 A voluntary change in employment made in good faith may constitute a substantial change of circumstances sufficient to warrant modification of maintenance. *In re Marriage of Deike*, 381 Ill. App. 3d 620, 636, 887 N.E.2d 628, 642-43 (2008). A change in employment is

not made in good faith if it is prompted by a desire to evade support payments. *Barnard*, 283 Ill. App. 3d at 369, 669 N.E.2d at 729. Nonetheless, finding that a change in employment was made in good faith does not automatically require a modification of support because the trial court may reject the "good-faith change in determining whether the obligor experienced a substantial change in circumstances." *Barnard*, 283 Ill. App. 3d at 371, 669 N.E.2d at 730. A modification of a maintenance obligation is not warranted when the circumstances that prompted the change were not fortuitous but, instead, brought about by the party seeking the modification. *Pierce v. Pierce*, 69 Ill. App. 3d 42, 45, 386 N.E.2d 1175, 1178 (1979); *In re Marriage of Rushing*, 258 Ill. App. 3d 1057, 1063, 628 N.E.2d 245, 250 (1993).

¶ 40 In this case, the trial court did not specifically find that Glenn's departure from his employment was made in good faith. Although the court found that Glenn's decision to leave Caterpillar was voluntary, the labels "voluntary" and "involuntary" "can be deceiving and are not always determinative as to whether one acted in good faith." *Barnard*, 283 Ill. App. 3d at 372, 669 N.E.2d at 730-31. Indeed, based on the court's rationale, it does not appear that the court found Glenn's decision to accept the severance package, in and of itself, constituted bad faith. In this regard, the court stated the following:

> "So, [the court] believe[s] that it is a voluntary termination of [Glenn's] employment, [the court] believe[s that Glenn] was taking a chance, [the court] believe[s] that most likely worked against him, and that [Glenn] made an incorrect decision, but those are the types of things that happen in an economy such as this."

¶ 41 In denying Glenn's request to modify maintenance, the trial court focused instead

on Glenn's efforts to find another job, his large financial expenditures in a short time period, and his decision to voluntarily support Heather and her two children, which called into question not only Glenn's motivation–whether he was trying to evade support–but also whether a substantial change of circumstances occurred.

¶ 42 With regard to Glenn's efforts to find other employment, Glenn testified that he did not begin "seriously" looking for another job until January 2010, which was (1) 11 months after he left his employment at Caterpillar and (2) 1 month after he filed his petition to modify maintenance. The trial court was not persuaded by Glenn's "serious" efforts, stating as follows:

> "[I]n light of the testimony on the assets, the extravagant spending, that it would have been appropriate for someone to produce a job search history and verify job applications and the search that [Glenn] indicated that he was making, and that simply was not done, and that goes to [Glenn's] credibility *** in relation to his inability to obtain employment."

¶ 43 Although Glenn does not contest the trial court's credibility determination, he asserts that his spending was not extravagant. However, the record shows that in the months following his termination from employment, Glenn spent not only the severance package he received from Caterpillar (approximately $110,000 gross) but also the nearly $200,000 non-taxable settlement money he received in late 2008 and early 2009, leaving only $4,500 by July 2010. Given the types of itemized purchases Glenn made during that period, we conclude that the court's finding that such spending was extravagant, particularly in light of Glenn's lack of effort to obtain new employment, was not against the manifest weight of the evidence.

¶ 44 Glenn also asserts that the trial court's criticism of his support of Heather and her two children was not warranted because he was not seeking modification due to his increased expenses but due to his loss of income. In this regard, we conclude that the court properly considered Glenn voluntarily supported Heather and her children for two reasons.

¶ 45 First, Glenn and Heather were not married, and Glenn did not have a legal obligation to support Heather and her children. See *In re Marriage of Earhart*, 149 Ill. App. 3d 469, 476, 500 N.E.2d 560, 564 (1986) (holding that the trial court did not err by refusing to consider the aspects of the obligor's expenses relating to his girlfriend and his girlfriend's children when determining the child-support award for his child from his former marriage).

¶ 46 Second, it was entirely appropriate for the trial court to consider whether Glenn's financial difficulties were the result of his own doing–by failing to obtain new employment and voluntarily supporting Heather and her children–or by circumstances beyond his control. See *In re Marriage of Carls*, 150 Ill. App. 3d 812, 502 N.E.2d 756 (1986) (finding that the trial court did not err by refusing to reduce child-support payments where the obligor left a job earning $13 per hour, moved to Florida, and took a job earning $5 per hour; "the change of circumstances *** was not a fortuitous change but a deliberate and ill-advised one"); *Pierce*, 69 Ill. App. 3d at 45, 386 N.E.2d at 1178 (finding no substantial change in circumstances warranting a termination of maintenance where the financial problems were due only to the obligor's increased expenses following his remarriage).

¶ 47 Here, the circumstances Glenn found himself in when he filed the petition to modify maintenance were not fortuitous. The trial court questioned Glenn's efforts to find a new job and found that Glenn had spent extravagantly the large sums of money he would otherwise

have had available to him.

¶ 48 3. *Glenn's Claim Regarding Janet's Good-Faith Effort To Become Self-Sufficient*

¶ 49 Glenn also contends that the trial court erred by denying his petition to modify maintenance because Janet had failed to make a good-faith effort to become self-sufficient. Specifically, Glenn asserts that since their divorce, Janet had only looked for one job and that her eventual transfer to that employment paid less than her previous job. We disagree.

¶ 50 The failure of a recipient of maintenance to make a good-faith effort to become self-sufficient may be a basis to reduce maintenance. *In re Marriage of Pedersen*, 237 Ill. App. 3d 952, 958, 605 N.E.2d 629, 634 (1992) (recipient of permanent maintenance has an obligation to work toward becoming self-sufficient). However, "the goal of financial independence 'must be balanced against a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage.' " *Pedersen*, 237 Ill. App. 3d at 958, 605 N.E.2d at 634 (quoting *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378, 571 N.E.2d 1135, 1140 (1991)).

¶ 51 In this case, the evidence showed that Janet, a high-school graduate, had (1) no further education or training, (2) worked part-time during the marriage, and (2) been continuously employed following the divorce. To earn additional income, Janet sought and obtained additional preschool classes and assumed the preschool's custodian responsibilities, which resulted in the modest growth of her annual income following her divorce. In addition, Janet–approximately 47 years old at the time of the hearings on Glenn's petition to modify maintenance–testified that once she had reached the point where she could not earn additional income at her preschool employment, she obtained new employment that provided her the ability

to increase her workload and the opportunity to move up in the company. Janet's new employer also afforded her health insurance and retirement, which was not an option at the preschool. Thus, the trial court's conclusion that Janet made a good-faith effort to become self-sufficient but still needed maintenance was entirely appropriate. See *In re Marriage of Lenkner*, 241 Ill. App. 3d 15, 24, 608 N.E.2d 897, 903 (1993) (finding that the spouse receiving maintenance did not have an obligation to seek additional training and education where she sought and accepted appropriate employment).

¶ 52 Accordingly, we conclude that the trial court did not abuse its discretion by refusing to terminate or reduce maintenance.

¶ 53 B. The Trial Court's Imposition of Attorney Fees

¶ 54 Glenn next argues the trial court erred by ordering him to contribute $1,963 toward Janet's attorney fees. Specifically, Glenn contends that (1) the court lacked the authority to award attorney fees because Janet did not file a petition for contribution and only requested fees in her response to Glenn's petition to modify maintenance and (2) he lacked the ability to pay Janet's attorney fees while she had the ability to pay. We address Glenn's contentions in turn.

¶ 55 1. *The Applicable Statute and Standard of Review*

¶ 56 Requests for attorney fees incurred in postdecree dissolution proceedings are governed by section 508 of the Act (750 ILCS 5/508 (West 2010). *Blum*, 235 Ill. 2d at 44, 919 N.E.2d at 347. Section 508(a)(2) provides, in part, as follows:

> "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may

order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** At the conclusion of any pre-judgment dissolution proceeding under this subsection, contributions to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection. *** Awards may be made in connection with the following:

* * *

(2) The enforcement or modification of any order or judgment under this Act." 750 ILCS 5/508(a)(2) (West 2010).

¶ 57 Section 503(j)(2) provides as follows:

"Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504." 750 ILCS 5/503(j)(2) (West 2010).

¶ 58 A trial court's decision whether to award attorney fees will be reversed only when the court abuses its discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174, 824 N.E.2d 177, 190 (2005). A court abuses its discretion when the court "acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Haken*, 394

Ill. App. 3d 155, 160, 914 N.E.2d 739, 743 (2009).

¶ 59 2. *Glenn's Challenge to the Trial Court's Authority To Award Attorney Fees*

¶ 60 Glenn contends the trial court lacked the authority to award attorney fees because Janet did not file a petition for contribution and only requested fees in her response to Glenn's petition to modify maintenance. We disagree.

¶ 61 In support of his contention, Glenn cites *In re Marriage of Konchar*, 312 Ill. App. 3d 441, 443, 727 N.E.2d 671, 673 (2000), for the proposition that section 503(j) of the Act (750 ILCS 5/503(j) (West 1998))–which contains certain timing requirements for a petition for contribution–applied to postdecree dissolution proceedings. Glenn notes that in *Blum*, 235 Ill. 2d at 47, 919 N.E.2d at 349, the supreme court overturned *Konchar*'*s* holding that section 503(j) of the Act applied to both predecree and postdecree petitions for contribution to attorney fees. According to Glenn, however, he posits that the *Blum* court did not address the separate holding in *Konchar* that a one-sentence request for attorney fees was inadequate to allow the trial court to award attorney fees.

¶ 62 Regardless whether the separate holding in *Konchar* survives *Blum*, *Konchar* does not support Glenn's contention that the trial court lacked the authority to award attorney fees. In *Konchar*, the court held:

> "It is well settled that a party requesting attorney fees must do more than merely ask for attorney fees. Specifically, the party requesting attorney fees must present the trial court with a detailed record containing the computations for fees, who performed the services for which fees are sought, the time spent representing the

client, and the hourly rate charged." *Konchar*, 312 Ill. App. 3d at 444, 727 N.E.2d at 674.

¶ 63 In this case, Janet did more than merely ask for attorney fees. Janet tendered, and the trial court admitted, with Glenn's acquiescence, two billing statements identifying the services provided, the time spent, and the hourly rate charged. In this regard, Glenn stipulated that the fees sought were reasonable.

¶ 64 Moreover, as previously noted, section 508(a) of the Act requires due notice and a hearing. 750 ILCS 5/508(a) (West 2010). Those requirements were met here. Glenn essentially waived a further hearing by stipulating to the reasonableness of the fees, and the record shows that the trial court had already considered evidence on the financial resources of the parties before entering the judgment on fees. Therefore, the court was clearly acting within its discretion to consider whether to award attorney fees.

¶ 65 3. Glenn's Claim Regarding the Parties' Respective Ability To Pay Attorney Fees

¶ 66 Glenn also contends that the trial court erred by ordering him to contribute $1,963 toward Janet's attorney fees because he lacked the ability to pay Janet's attorney fees while she had the ability to pay. We disagree.

¶ 67 In support of his contention, Glenn notes the financial assets contained within Janet's CDs and savings account, as well as her having monthly living expenses that allowed her to continue to grow her estate. In contrast, Glenn asserts that he had only $4,500 by the July 2010 hearing and was using those assets to pay for his own support and fulfill his maintenance obligations. Glenn posits that given the financial status of the parties, the trial court abused its discretion by requiring Glenn to invade capital assets to avoid plaintiff having to invade her

capital assets to pay the attorney fees. We are not persuaded.

¶ 68 We first note that the trial court's August 2010 written order, which required Glenn to contribute $1,963 toward Janet's attorney fees, specifically noted that the court considered the parties' respective financial resources under section 508(a) of the Act, which included, by extension, consideration of the factors listed under sections 503 and 504 of the Act. The evidence upon which the court applied those appropriate factors showed that Glenn had large sums of money available to him that, as the court found, he no longer had due to his extravagant spending, including the voluntary support of Heather and her two children. In addition, Glenn acknowledged that he had the ability to earn $50,000 annually, which was a substantially greater annual sum than Janet could earn. See *In re Marriage of Pond*, 379 Ill. App. 3d 982, 987, 885 N.E.2d 453, 458 (2008) (a court may consider a party's current and prospective income when determining ability to pay attorney fees).

¶ 69 Glenn cites *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344, 809 N.E.2d 246, 250 (2004), in which the appellate court found that the trial court had abused its discretion by ordering the former husband to pay $250 toward his former wife's attorney fees because the former wife had $74,000 in savings "as well as other financial assets." In this case, however, Janet's assets are far more modest. Additionally, a "trial court may still consider why attorney fees were incurred in the first place." *Pond*, 379 Ill. App. 3d at 989, 885 N.E.2d at 459 (but concluding the trial court did not abuse its discretion by not awarding fees due to the other party's alleged misconduct); see also *In re Marriage of Ziemer*, 189 Ill. App. 3d 966, 970, 546 N.E.2d 229, 231 (1989) ("In determining a request for attorney fees, it is proper for the court to give consideration to who precipitated the need for legal fees"). Here, Glenn necessitated the

litigation by seeking, unsuccessfully, to terminate maintenance. For all these reasons, we conclude that the court did not abuse its discretion by ordering Glenn to contribute $1,962.75 toward Janet's attorney fees.

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated, we affirm the trial court's judgment.

¶ 72 Affirmed.