NOTICE
Decision filed 01/20/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0495

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JAMES R. WILLIAMSON,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 07-D-773
	)	
MELISSA D. WILLIAMSON,	)	Honorable
	)	Brian Babka,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Appleton concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court did not abuse its discretion in awarding maintenance in the amount of $4,500 per month, ordering the petitioner to pay $5,000 of the respondent's attorney fees, and finding that the respondent had dissipated marital assets, and the trial court did not err in failing to require the petitioner to maintain more than one life insurance policy with the respondent named as the beneficiary.

The respondent, Melissa D. Williamson, appeals a judgment entered by the circuit court of St. Clair County dissolving her marriage to the petitioner, James R. Williamson. On appeal, the respondent raises the following issues: (1) whether or not the trial court abused its discretion by failing to award permanent monthly maintenance and failing to award a greater amount of monthly maintenance, (2) whether or not the trial court abused its discretion in failing to order the petitioner to pay all the respondent's attorney fees, (3) whether or not the trial court abused its discretion in finding that the respondent had dissipated marital assets, and (4) whether or not the trial court abused its discretion in failing

to order the petitioner to maintain more life insurance policies with the respondent as the beneficiary. For the following reasons, we affirm.

The parties were married on August 23, 1968. One child was born of the marriage, Sarah M. Williamson, born June 3, 1975, who was 33 years of age and emancipated at the time of the judgment. On September 27, 2007, at the time the petition was filed, the petitioner was 62 years old and was employed as the presiding circuit court judge for Johnson County, Illinois. The petitioner had graduated from the University of Arkansas Law School in 1974 and had been a circuit court judge of Johnson County since 1978. In 2008, his gross salary was $162,164.36. He also received interest income, and the parties' proposed 2008 joint tax return showed interest income of $44,387. The majority of this interest income is from the petitioner's nonmarital property and is broken down as follows: (1) Country Life policy 1100099 in the amount of $632, (2) Country Life policy 867808 in the amount of $339, (3) the petitioner's Integra Bank accounts in the amount of $1,571, (4) the respondent's Integra Bank account in the amount of $35, (5) the petitioner's and Sarah's "Invest Fin'l" in the amount of $209, and (6) the estate of Angie Williamson in the amount of $41,601.

The respondent was 64 years old and was unemployed but had a college education with a degree in sociology. The respondent had not worked outside the home since their daughter was born in 1975. Before their daughter was born, the respondent was a fifth-grade teacher for three years. The respondent testified that she suffered from the following health conditions: common variable immune deficiency, type 2 diabetes, hypothromboembolism, hypothyroidism, rhinitis, hammer toes, depression, scoliosis, high blood pressure, chronic ear problems, a prolapsed bladder, cataracts, and chronic gastritis. The respondent testified to having monthly expenses totaling $9,820.03. However, it is unclear what her actual monthly expenses are, because her testimony and financial statements varied for the same expenses. She further claimed that her monthly expenses were higher than when the parties were

married.

The trial court entered the judgment of dissolution on June 29, 2009. The court ordered the petitioner to pay the respondent $4,500 per month in maintenance, reviewable after the sale of the marital residence and after the petitioner's retirement. The marital residence was to be sold within 90 days, and if not sold within 90 days, it was to be auctioned. The petitioner was awarded 40% of the sale proceeds, and the respondent was awarded 60% of the sale proceeds. The marital personal property was ordered by the court to be divided between the parties on the basis of a coin flip. The winner of the coin flip was to pick the first item of his or her choice and with the other party picking the second item of his or her choice, and the parties taking turns until all the items were chosen.

The respondent was also awarded one-half of the marital portion of the petitioner's pension. The petitioner was also ordered to maintain the premiums on his Valley Forge life insurance policy with a value of $500,000 and to name the respondent as the beneficiary. The petitioner was further ordered to pay $5,000 toward the respondent's attorney fees. The respondent had incurred $52,484.35 in legal fees as of May 8, 2009.

The trial court held that the respondent had dissipated marital assets in the amount of $115,528.92 through the following transactions: (1) a withdrawal of $3,500 from the parties' joint savings account, (2) a withdrawal of $43,980 from account 101974, (3) a withdrawal of $200 from account 170028757, (4) a withdrawal of $37,440 from account 170012892, (5) a check made to Sarah Williamson for $1,000, (6) eight payments totaling $1,785.58 for various doctor, medical, and drug bills on behalf of Sarah, (7) six payments totaling $2,252.63 for various utility bills and credit card bills on behalf of Sarah, (8) a payment of $421.81 for Sarah's moving expense, (9) a payment of $220 for meals for Sarah and her husband, (10) a payment of $13,604.65 for Sarah's wedding expenses, (11) construction expenses of $5,650.24 for Sarah and her husband, (12) personal vacations to Florida and

Niagra Falls totaling $4,000, and (13) the sale of personal property at the antique booth in the amount of $136. The respondent was unable to account for the $85,120 that was withdrawn from the four accounts.

The respondent filed a posttrial motion, which was argued and denied by the trial court on August 31, 2009. The respondent then filed a timely notice of appeal on September 15, 2009. Subsequently, on March 17, 2010, the parties filed a petition for a modification of the judgment, wherein they stated that they had reached an agreement that the respondent would be awarded the marital home and two adjacent tracts of land valued at $265,000. The parties also agreed to a distribution regarding the distribution of the personal items that were supposed to have been distributed via the coin toss. The trial court granted the petition for the modification on April 26, 2010.

The respondent first argues on appeal that the trial court abused its discretion in failing to award her permanent maintenance and by only awarding her $4,500 per month in maintenance. The respondent argues that the trial court improperly granted rehabilitative maintenance instead of permanent maintenance. Furthermore, the respondent argues that although her financial statement filed on April 20, 2009, establishes that her monthly expenses are $9,820.02, she was awarded only $4,500 maintenance per month.

Section 504 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/504 (West 2008)) sets out the factors for the court to consider in determining an award for maintenance, including the following: (1) the financial resources of the party seeking maintenance, including his or her marital property, (2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, (3) the standard of living established during the marriage, (4) the duration of the marriage, (5) the age and physical and emotional condition of each party, (6) the ability of the spouse paying maintenance to meet his needs while meeting those of the spouse

seeking maintenance, and (7) the tax consequences of property division. *In re Marriage of Elies*, 248 Ill. App. 3d 1052 (1993). The trial court's award of maintenance will not be reversed absent an abuse of discretion. *In re Marriage of Charles*, 284 Ill. App. 3d 339 (1996). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378 (1991).

In response, the petitioner argues that the respondent was awarded permanent maintenance because the award was not fixed for a period of time. The court awarded the respondent "maintenance in the amount of $4,500.00 per month, reviewable at the request of either party after each of the following events: 1) sale of the marital residence and tracts two and three, and 2) Plaintiff's retirement." If maintenance does not have a term certain to end, then it is permanent maintenance. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 627 (2000). "The distinction between 'permanent' and 'temporary' maintenance is a fine one, amounting, in essence, to the burden of proving a change in circumstances ***." *In re Marriage of Culp*, 341 Ill. App. 3d 390, 397 (2003). According to the petitioner, the maintenance award is not subject to an arbitrary review after a set period of time or years. The maintenance award is merely reviewable after two major changes in circumstances, the sale of the home, which is now moot, and the petitioner's retirement. Additionally, all maintenance awards are reviewable. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 617 (2004). The Act allows an order of maintenance to be modified upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a) (West 2008). A few of the factors a court may consider are any change in the employment status of either party, the property awarded to each party under the judgment of dissolution and the present status of the property, and the increase or decrease in each party's income. 750 ILCS 5/510(a) (West 2008). Therefore, even if the court had not provided for a review after these events, either party could have petitioned for a review of maintenance due to a substantial change in

circumstances. The sale of the real estate and the retirement of the petitioner would result in a substantial change in circumstances. Accordingly, we conclude that the trial court did not abuse its discretion by providing that the maintenance award would be reviewable upon the sale of the real estate or the petitioner's retirement.

The respondent also argues that the trial court abused its discretion in only awarding her $4,500 per month in maintenance. The financial statement filed by the respondent on April 20, 2009, established that her monthly expenses were $9,820.02. The petitioner's net income per month is $10,776.70. Accordingly, the respondent is asking for more than 91% of that salary for her monthly expenses alone. In coming to its determination of maintenance, the trial court took into consideration the length of the parties' marriage, that the respondent had been a stay-at-home mother since the birth of their daughter, that the petitioner has been the primary source of income, that the parties have enjoyed a comfortable lifestyle during their marriage, and that the respondent is currently unemployed, has no work history, and has poor health. The trial court also took into consideration the parties' agreement regarding the distribution of their personal and real property. The respondent was awarded the marital residence and two adjacent tracts of land valued at $265,000. The respondent was also awarded half of the petitioner's pension and was named as the beneficiary of the petitioner's life insurance policy worth $500,000. Additionally, the trial court took into consideration the many inconsistencies in the respondent's statements of alleged monthly expenses. For example, her living expenses, such as food, supposedly increased while living alone, due to her dietary needs. However, the respondent has been diagnosed with type 2 diabetes since 1996. She also included expenses that she does not currently pay, such as supplemental health insurance, a Medicare Part A premium, a Medicare Part D premium, and a personal trainer expense. Under these circumstances, we cannot conclude that the trial court abused its discretion in awarding maintenance in the amount of $4,500 to the respondent.

We turn now to whether the trial court erred in failing to order the petitioner to pay more than $5,000 of the respondent's attorney fees. The petitioner was ordered to pay $5,000 of the respondent's attorney fees and costs, which totaled $52,484.35. As a general rule, attorney fees are the primary responsibility of the party for whom the services are rendered. *In re Marriage of Krivi*, 283 Ill. App. 3d 772, 778 (1996). The Act does allow the trial court to award attorneys fees in a "reasonable amount" (750 ILCS 5/508(a) (West 2008)), and the court has discretion in determining "whether and how much to award as attorney fees." *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 478 (1999).

In the instant case, the record reveals that the judgment in this case was not rendered until two years after the petition had been filed. Although there were no issues pertaining to child support or visitation and the only issues to be resolved pertained to the distribution of the marital property and the awarding of maintenance, the case was delayed and continued on the part of the respondent and her attorney. By May 8, 2009, according to the affidavit for fees filed, the respondent had accrued $52,484.35 in attorney fees. The record reveals daily contact by the respondent with her attorney via phone or email, resulting in $5,488.75 in fees charged. The respondent unnecessarily increased the cost of litigation through the filing of a petition for an emergency order of protection, which was granted but the order was quickly vacated and never reentered; three separate motions for contempt against the petitioner, none of which were granted; and many motions for continuances. The trial court, using its discretion, considered the respondent's actions in delaying the proceeding, her award of maintenance, each party's reasonable expenses, and the distribution of marital property assets and the allocation of debts to each in the judgment of dissolution. Accordingly, we conclude that the trial court did not abuse its discretion in ordering the petitioner to pay only $5,000 of the respondent's attorney fees.

Next on appeal the respondent argues that the trial court improperly held that she had

dissipated marital assets in the amount of $115,528.92. Dissipation is defined as the use of marital property for one spouse's sole benefit or purpose unrelated to the marriage at a time when it is undergoing an irreconcilable breakdown. *In re Marriage of Osborn*, 206 Ill. App. 3d 588 (1990). The party charged with the dissipation of marital assets has the burden of showing, by clear and specific evidence, how the marital funds were spent. *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 983 (1992).

After a review of the record, the respondent admits that she could not account for how the $81,620 in cash withdrawals from accounts 101974, 170028757, and 170012892 was spent. Accordingly, the respondent failed to present any evidence that this money was not dissipated. Furthermore, the record reveals that the respondent argued that the $3,500 she withdrew from the parties' joint savings account was used to pay real estate taxes on the marital home. However, the marital expenses were to be paid from the parties' joint checking account. The respondent did not provide any evidence that she had replaced the $3,500. In addition, the respondent spent a significant amount on the parties' adult daughter. The money spent on their daughter's behalf was unrelated to the marriage, because their daughter is an emancipated adult. We note that their daughter is 35 years of age and has a law degree from Southern Illinois University. Furthermore, the respondent also spent $4,000 on personal vacations, traveling to Florida and Niagra Falls, after the marriage was irretrievably broken and for the sole benefit of the respondent. Accordingly, we conclude that the trial court was correct in determining that the respondent had dissipated marital assets, and this finding is not against the manifest weight of the evidence.

Finally, the respondent argues that the trial court improperly ordered the petitioner to maintain only one life insurance policy, the $500,000 Valley Forge life insurance policy with the respondent named as the beneficiary. The petitioner agreed in court to maintain his Valley Forge life insurance policy worth $500,000 with the respondent as the beneficiary.

The respondent requested that the petitioner also be required to maintain the premiums on two Country Life insurance policies, each worth around $37,000, with the respondent as the beneficiary, and to also obtain a new life insurance policy worth $750,000 with the respondent as the beneficiary. Accordingly, the respondent is requesting nearly $1.324 million in life insurance policies.

While the Act does not contain language specifically authorizing a trial court to order security for maintenance, the legislature did not specifically prohibit such an order. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1046 (2008). Therefore, courts have held that they will not presume that an order requiring a party to keep a life insurance policy as security for maintenance violates the Act's requirement that the obligation to pay maintenance terminates upon the death of either party. *In re Marriage of Walker*, 386 Ill. App. 3d at 1046. Furthermore, the Act grants the trial court wide discretion in awarding maintenance and dividing the marital property. *In re Marriage of Walker*, 386 Ill. App. 3d at 1046. In the instant case, the petitioner was ordered to maintain his Valley Forge life insurance policy worth $500,000 with the respondent as the beneficiary and was ordered to pay maintenance of $4,500 per month to the respondent. This policy alone provides sufficient resources to the respondent should the petitioner suffer an untimely death. The $500,000 is equivalent to nine years of maintenance. However, in the event of the petitioner's untimely death, she would receive this as a lump sum and could manage the money to provide for maintenance for more than nine years. In addition, the respondent retained the marital residence and two adjacent tracts of land worth $265,000. Accordingly, we cannot conclude that the trial court abused its discretion in denying the respondent's request that the petitioner also maintain the two Company Life insurance policies with the respondent named as the beneficiary.

For the foregoing reasons, the judgment entered in the circuit court of St. Clair County

is hereby affirmed.

Affirmed.