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2012 IL App (3d) 100624-U

Order filed May 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

IN RE MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
SUSAN BECKER,)	Will County, Illinois
)	
Petitioner-Appellee,)	
)	Appeal No. 3-10-0624
v.)	Circuit No. 07-D-2073
)	
RONALD BECKER,)	Honorable
)	Dinah L. Archambeault,
Respondent-Appellant.)	Judge, Presiding

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

ORDER

- ¶1 *Held:* In dissolution of marriage action, the trial court did not err when it granted residential custody of couple's two boys to the wife, with liberal visitation to the husband, and denied the husband's request for maintenance and an attorney fee contribution. The trial court corrected its non-compliance with the custody deadlines of Illinois Supreme Court Rule 922 by incorporating in the judgment of dissolution findings regarding the delay in its custody determination.
- ¶2 A judgment of dissolution of the 20-year marriage of petitioner Susan Becker and respondent Ronald Becker awarded the couple joint custody of their two children, with residential custody

granted to Susan and divided the parties' property equally. Ronald was ordered to pay child support but was denied maintenance and an attorney fee contribution. He appealed. We affirm.

¶ 3

FACTS

¶ 4 Petitioner Susan Becker and respondent Ronald Becker were married in 1989. The couple had two sons; Michael, who was born in 1996, and Kevin, who was born in 1999. Susan filed the dissolution action on November 13, 2007, and Ronald was served with her petition for dissolution on December 7, 2007. In March 2008, Susan served Ronald with standard marital interrogatories. In April 2008, the trial court ordered Ronald to contribute to the household expenses and keep a job search diary. In May 2008, Susan filed a motion for the appointment of Margaret Bongiorno as an evaluator pursuant to section 604.5 of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/604.5 (West 2008). In June 2008, Susan filed a petition for contempt based on Ronald's failure to pay household expenses or keep a job diary pursuant to the trial court's prior order. Susan also filed a motion for discovery compliance, seeking Ronald's answers to her interrogatories and her notice to produce.

¶ 5 In July 2008, the trial court granted Susan's section 604.5 motion and entered an order appointing Bongiorno to perform a custody evaluation. At the same hearing, the trial court entered a rule to show cause against Ronald for his failure to provide a job diary and pay household expenses. The trial court also ordered him to comply with Susan's discovery requests. On September 3, 2008, Susan filed a motion for default in which she alleged that Ronald willfully failed to contact Bongiorno to participate in the custody evaluation process. Susan further alleged that Ronald's non-compliance resulted in "undue delays in the Court's timely prosecution of this matter." At a September 15, 2008, hearing, the trial court found Ronald in indirect civil contempt pursuant

to the July rule to show cause and ordered that he contact Bongiorno within one week to schedule an appointment for the custody evaluation. The following week, the trial court issued an order in which it found that Ronald had contacted Bongiorno. The trial court also found that Ronald was “underemployed having no benefits and not being a certified teacher,” and continuing the requirement that Ronald maintain a job search diary. The rule to show cause remained in effect.

¶ 6 On October 6, 2008, the trial court issued a civil warrant for Ronald’s arrest due to his failure to comply with the job search diary requirement and to pay household expenses. The same day, Ronald filed a motion to modify, vacate or rehear in which he argued that the job search diary requirement was unnecessary because he had employment and served as the boys’ “full-time caregiver” while Susan worked. The motion asked the trial court to vacate Ronald’s job search obligation. Also, the warrant for Ronald’s arrest was quashed by agreed order when he paid the household expense arrearage he owed. In November 2008, the trial court ordered the rule against Ronald to remain in effect due to his continued failure to contribute to household expenses or to tender a job search diary. A hearing for Ronald’s motion to modify was set for December 30, 2008. On December 12, 2008, Susan moved for a three-week extension of time for Bongiorno to complete the evaluation report. Bongiorno thereafter completed her report and both parties were in possession of copies of it on December 29, 2008. Bongiorno’s completed report was published to the trial court on December 30, 2008, when Susan’s motion for a time extension was heard and granted. Ronald’s motion to modify was not heard.

¶ 7 Trial was set for March 16, 2009. Ronald was deposed in January 2009. On March 6, 2009, he filed an emergency motion for the appointment of a section 604(b) (750 ILCS 5/604(b) (West 2008)) custody evaluator. The trial court questioned the timeliness of Ronald’s motion, stating it

would set the motion for a hearing, although it was “not inclined to grant [Ronald’s] request.” A hearing ensued on March 11, 2009, at which Ronald argued, in part, that because his request fell within the 18-month time limit set forth in Supreme Court Rule 922 for custody determinations, his motion was timely and should be granted. The trial court disagreed and denied Ronald’s motion, finding that because it was filed shortly before the trial was scheduled to begin, it was untimely.

¶ 8 Trial began on March 16, 2009, with Bongiorno as the first witness in Susan’s case-in-chief. Bongiorno recommended the parties be awarded joint custody, with Susan to have residential custody. Bongiorno testified that Susan and Ronald were able to reach consensus on issues of the children’s health, religious, and educational care. Both parents managed the children’s daily routines to some extent. Ronald spent more physical time with the children but was lenient with them, unwilling to set limits, and undermined Susan’s authority. Susan was more willing to facilitate a good relationship between Ronald and the boys and displayed a wide variety of parenting skills. Both boys were aware that their father undermined their mother’s efforts to set consequences. The older son felt Susan set appropriate expectations and the younger son said Susan kept track of his activities for him. The older son expressed an indirect preference for living with Susan, considering her to be the more reliable parent. The younger son also considered Susan to be more consistent in her parenting but was confident his parents would make the best decision regarding his custody. Both boys looked forward to their mother living in a new house in a neighborhood with more children. Bongiorno expressed concern with Ronald’s underemployment and its effect on his ability to provide financially for his children. In preparing her report, she presumed Ronald would return to full-time work and that Susan’s proposed use of after-school daycare was appropriate. She would have not changed her custody recommendation on the basis of Ronald’s continued part-time

employment but would have changed the visitation structure.

¶ 9 Susan testified that she has a bachelor's degree in computer science, which she earned prior to the marriage. She has worked at Caterpillar as a project manager or computer consultant since 1989. In 2008, she grossed \$100,000, including \$87,000 salary and \$13,000 bonus in 2008. She and Ronald had agreed after his 2005 employment termination that he would concentrate on their "flip house" for six months and not seek other work. After a year of Ronald's unemployment, the work on the "flip house" had still not been completed. She told Ronald she would not invest in any more "flip houses" until the marital home was rehabilitated.

¶ 10 Susan further testified that her work hours were 9 or 9:30 a.m. to 5 or 6:30 p.m., although she occasionally worked as late as 8 p.m. She had flexibility in arranging her schedule. She currently worked at home one day a week and anticipated telecommuting more frequently in the future. To determine scheduling options, she had begun driving the boys to school the prior year, although Ronald had driven them previously. She and Ronald shared responsibilities for the boys' extracurricular activities, although she generally registered them and paid the fees. She took night classes for several years between 2002 and 2006 in pursuit of a degree in interior design. She would take classes three nights a week for six weeks in the summer and one or two classes per semester.

¶ 11 Ronald testified that he has a bachelor's degree in finance, which he earned in 1992 by attending college full-time after the parties were married. He began working at his first degree-related position in 1993 as a pricing coordinator, and then later, as a cost accountant at Agco. In 1998, he took a position at Panduit but was terminated in April 2005, at which time his position was pricing analyst. At that time, he was grossing \$48,000 per year. In 2005, he also earned a landscape certificate by taking night classes. He and Susan agreed after his termination in 2005 that he would

be a stay-at-home father and work as a real estate entrepreneur, rehabilitating and selling houses. The boys continued in daycare throughout the summer of 2005. Ronald drove the children to school beginning in September 2005. In fall 2006, Ronald began working part-time at the boys' school as a substitute teacher. He estimated that he worked twice a week during the 2006-2007 school year and three times a week during the 2007-2008 school year. He was a daily substitute teacher beginning in August 2008 and was asked to fill the position of study hall supervisor in September 2008. In that position, he grossed \$1,100 per month for nine months, earning \$12.35 per hour. He considered his position "volunteering with pay." He did not know whether benefits, such as insurance, were available to him. He hoped to continue buying "flip houses" and selling them after rehabilitating them. He planned to work on these properties at night and on the weekend. The first house he and Susan bought in 2004 took three years to rehabilitate and sell, and resulted in a profit of approximately \$21,000. A second house he bought in July 2007 in partnership with a third party had been on the market for over a year and was listed for sale for \$169,900. After he had bid on the property, Susan told him she would not invest in it. The marital home was in "disrepair" and in need of rehabilitation. Susan would not provide the funds necessary for him to complete the work. Ronald filed a petition seeking fees from Susan and another motion for prospective fees, in which he also sought contribution from Susan for his attorney fees.

¶ 12 Ronald characterized himself as the children's "primary caretaker." He was responsible for the boys' daily routines. He drove them home from school, supervised their homework, prepared dinner and ate with them. They ate dinner between 5:30 and 6:30 p.m. on week nights; Susan did not eat with them. He enrolled them in extracurricular activities and paid their registration fees. Ronald coached the boys' sport teams and participated with them in other activities. Closing arguments were

set for June 8, 2009, but were rescheduled numerous times due to scheduling conflicts of the parties, their attorneys, and the trial court. The trial court expressed its concern with the scheduling issues and its desire to get the case finished. The trial court ultimately cleared its schedule to ensure that the trial was completed. The trial court heard closing arguments on October 2, 2009, and issued the judgment of dissolution on November 19, 2009.

¶ 13 The judgment awarded the parties joint legal custody and incorporated a joint parenting agreement. The trial court designated Susan as the primary residential parent and granted Ronald substantial visitation. Ronald was ordered to pay child support and one-third of the daycare costs, and the health-related and extracurricular expenses. We note that neither child meets the age limit for child care at the center the parties had testified about, so the father presumably no longer has a day care expense. The trial court declined to deviate downward on Ronald's child support obligation, "because of the nature of his work and the minimal income that he makes." The couple's property was distributed equally, with Ronald awarded the marital house in exchange for Susan's retention of her Caterpillar 401K account. All other accounts, furniture, and furnishings were to be divided equally. Each party remained responsible for his or her attorney fees.

¶ 14 In the judgment, it presented the following findings. Both Susan and Ronald were "very good" parents, and while their level of communication with each other was "not optimal," it was "sufficient to maintain the requisite level of communication necessary to share joint legal custody." Susan and Ronald had few disagreements over the children's medical and dental care, education, or religion. Although Ronald spent more physical time with the boys, Susan made major decisions concerning their care and also actively participated in their activities. Evaluator Bongiorno was "professional, competent" and her findings and recommendations were reliable.

¶ 15 The trial court thereafter entered an order vacating its requirement that Ronald maintain a job search diary. On December 18, 2009, both parties filed motions to reconsider. Susan moved for the court to provide that she be released from the mortgage and real estate tax obligations on the marital residence. She also sought to be awarded the entirety of the mortgage interest and real estate deductions on the marital home for the 2009 tax year. In Ronald's motion, he alleged, in part, that the judgment of dissolution was untimely and violative of Supreme Court Rule 922 because it was filed more than 18 months after the dissolution action was commenced. He also alleged that the trial court improperly held his lack of an expert against him when it had denied his request for an expert based on "time constraint[s] that were not enforced and did not exist." He sought reconsideration, *inter alia*, of the trial court's residential custody determination, and the visitation schedule, the denial of his maintenance and attorney fee contribution requests, and the grant of both dependent tax exemptions to Susan.

¶ 16 On February 11, 2010, Ronald filed a memorandum of law in support of his reconsideration motion. In his memo, he asserted, in part, that Supreme Court Rule 922 was unconstitutionally vague and violative of his due process rights and thus improperly used as a basis for the denial of Ronald's motion for a section 604(b) evaluation. Ronald also asserted that the trial court improperly drew a negative inference against him based on his failure to present an expert witness on custody. On July 15, 2010, the trial court granted Susan's motion to reconsider and modified the judgment of dissolution making Ronald solely responsible for the mortgage, real estate taxes and home insurance on the marital home, and prorating the tax deductions for the mortgage interest and real estate taxes between the parties. In addressing Ronald's motion, the trial court rejected his unconstitutionality argument, but granted the motion based on its failure to comply with Supreme

Court Rule 922. The trial court noted that although its failure to comply did not divest it of jurisdiction, it should have included reasons for the delay in the judgment of dissolution. The trial court incorporated the following into the judgment.

“Wife filed her Petition for Dissolution of Marriage on November 13, 2007 and served Husband with summons on December 7, 2007. Shortly after the expert witness, Dr. Margaret Bongiorno, published her 604.5 evaluation to the parties on December 29, 2008, this Court entered an order setting this matter for trial. Trial commenced on March 16, 2009, which was 3 months prior to the expiration of the time limitation set by Rule 922. However, the trial did not conclude within the 18-month time limit. Because this case was before the 2010 amendment to Rule 304(b), this Court was bound by the holding in *In re Marriage of Leopando*, 9[6] Ill. 2d 114, 119 (1983). Under the holding in *Leopando*, a court could only resolve the issue of child custody at the time it granted the dissolution of marriage because they are part of the same claim. 9[6] Ill.2d 114, 119. This Court could not sever[] the child custody issue and enter a final custody judgment prior to the resolution of the other matters involved in the dissolution proceeding. Thus, the reason for the delay was to allow the trial to conclude, which had begun

before the 18-month time limit tolled and continued beyond
the 18-month time limit.”

¶ 17 In addressing other issues raised by Ronald, the trial court denied his motion asserting that it misapplied the law when it denied his request for a section 604(b) evaluation. It further stated that it “did not draw a negative inference from the fact that Mr. Becker offered no expert opinions on the issues of custody or visitation, but simply noted that for the record when discussing witness testimony.” The trial court denied reconsideration of its decisions regarding residential custody and the parenting schedule. The trial court denied Ronald’s request for reconsideration of its failure to award him maintenance and attorney fees. It granted Ronald’s request to reconsider allocation of both tax exemptions for the dependent children, and allotted one child to Ronald and one to Susan for exemption purposes, and alternate years to each after the older child reached majority. Ronald appealed.

¶ 18 ANALYSIS

¶ 19 Ronald raises several issues on review. He challenges the constitutionality of Supreme Court Rule 922 and the untimely entry of the custody determination, the trial court’s award of residential custody to Susan, its denial of his request for maintenance, and its refusal to require Susan to contribute to the payment of his attorney fees.

¶ 20 We begin with Ronald’s assertions regarding Illinois Supreme Court Rule 922. Ill. S. Ct. R. 922 (eff. July 1, 2006). He asserts that the rule is unconstitutionally vague and was arbitrarily applied as a “sword and a shield” against him. Ronald complains that the trial court used the rule’s time limitations to deny his request for a custody evaluation but failed to comply with the rule when it entered the judgment of dissolution after the rule’s 18-month deadline for its entry had passed.

Ronald additionally asserts that the trial court drew a negative inference against him based on his failure to offer an expert witness on custody.

¶ 21 Illinois Supreme Court Rule 922 provides, in pertinent part:

“[a]ll child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay.” Ill. S. Ct. R. 922 (eff. July 1, 2006).

¶ 22 Ronald was served with the petition for dissolution on December 7, 2007. The judgment of dissolution, which determined custody and other matters, was entered on November 19, 2009, more than 23 months after the proceedings began and beyond the 18-month time limit pursuant to Supreme Court Rule 922. Ronald raised this issue in his motion to reconsider, which the trial court granted, finding that it had failed to make the written findings required under the rule. The trial court agreed that it had erred and incorporated into the judgment of dissolution a written finding for the delay. The trial court expressed the “reason for the delay was to allow the trial to conclude, which had begun before the 18-month time limit tolled and continued beyond the 18-month time limit.” We find the trial court’s statement satisfied the requirements of Rule 922. The trial began in March 2009 and was not completed until October 2, 2009. While the trial proceeded, the trial court noted its concerns that its own docket was full and scheduling would be difficult. Trial dates were continued on numerous occasions due to conflicts in the schedules of the trial court, the parties, and the attorneys. For example, closing arguments were initially set for June 5, 2009 and rescheduled

approximately five times until the trial court cleared its schedule in order for final arguments to be presented on October 2, 2009. The trial court issued the judgment of dissolution, which determined custody, on November 19, 2009.

¶ 23 Moreover, while Ronald complains that the parties waited more than six months for the report of Bongiorno, he was responsible in large part for the delayed submission of the custody evaluation due to his refusal to timely participate. Susan moved for the appointment of Bongiorno as her retained expert witness in May 2008, and the trial court appointed her on July 24, 2008. Susan met with Bongiorno in early August. By September 3, 2008, Ronald had not yet met with Bongiorno, despite her attempts to contact him. Susan filed a motion for default in which she alleged that Ronald willfully failed to contact Bongiorno and that Ronald's non-compliance with the custody evaluation resulted in "undue delays in the Court's timely prosecution of this matter." On September 15, 2008, the trial court ordered that Ronald contact Bongiorno within one week to schedule an appointment, which he did. Ronald met with Bongiorno at the end of September. Bongiorno's report was submitted to the parties on December 29, 2008. The chronology of the proceedings does not support Ronald's claim that the completion of Bongiorno's report unreasonably delayed the proceedings. We note that Ronald's failures to comply with Susan's discovery requests also necessitated additional hearings and prolonged the proceedings. We consider the trial court's decision to deny Ronald's 604(b) request was based on its untimeliness in relation to the trial setting. Ronald moved for the appointment of a 604(b) evaluation on March 6, 2009, within 10 days of the commencement of trial scheduled for March 16, 2008. In denying his motion, the trial court found the motion was "not made within a reasonable time before trial." The trial court did not err in its finding on this issue.

¶ 24 We thus find that under the circumstances, although the custody proceedings went beyond the 18-month time limitation set forth in Supreme Court Rule 922, there was no undue delay. Because we consider that the trial court corrected its error by incorporating into the judgment its reasons for exceeding the time limit on the custody determination, we need not consider Ronald's argument concerning the constitutionality of Supreme Court Rule 922. *Mulay v. Mulay*, 225 Ill. 2d 601, 607 (2007) (constitutional issues should be addressed only as a last resort; cases should be decided on unconstitutional grounds whenever possible).

¶ 25 We next consider the trial court's award of residential custody to Susan. Ronald contends that the custody determination was contrary to the evidence presented at trial, which he argues overwhelming supports an award of residential custody to him.

¶ 26 The trial court determines custody in consideration of the best interest of the children. It uses the following factors in reaching its determination:

“(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(8) the willingness and ability of each parent to facilitate and

encourage a close and continuing relationship between the other parent and the child; ***.” 750 ILCS 5/602(a)(1)-(5), (8) (West 2008).

¶ 27 A trial court may award joint custody if it determines that “joint custody would be in the best interests of the child.” 750 ILCS 5/2-602.1(c) (West 2008). In determining joint custody, the trial court should consider:

“(1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. ‘Ability of the parents to cooperate’ means the parents’ capacity to substantially comply with a Joint Parenting Order. The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;

(2) The residential circumstances of each parent; and

(3) all other factors which may be relevant to the best interest of the child.” 750 ILCS 5/2-602.1(c)(1)-(3) (West 2008).

¶ 28 A strong presumption favors the custody determination reached by the trial court. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002). We afford great deference to a trial court’s best interest findings in deciding custody because the trial court is in a better position to observe the witnesses and assess their credibility. *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002). We will not disturb a trial court’s custody ruling unless it is against the manifest weight of the evidence or is an abuse of discretion. *Seitzinger*, 333 Ill. App. 3d at 108.

¶ 29 Ronald argues that the trial court misapplied three best interest factors in awarding residential custody to Susan. We turn to his first challenge, that the second best interest factor, the wishes of the children regarding their custodian, favors him as custodial parent. He characterizes as suspect Bongiorno's conclusions that both boys indicated a preference for Susan as their custodial parent. Although neither boy expressed a residential preference, Bongiorno testified that the boys considered Susan as a more consistent caretaker. The testimony of both Susan and Ronald supported her statements. Ronald considered himself the nurturing and supportive parent while he saw Susan as authoritarian. Susan confirmed that she provided rules and discipline for the boys. We do not find that this factor favors Ronald.

¶ 30 Ronald also takes issue with the third best interest factor, which is the children's interactions and interrelationships with their parents, siblings and any other significant individual. Ronald argues that he had been the boys' primary caretaker for the four years prior to trial, that the children excelled under his supervision, and that he played a nurturing and supportive role in their lives. According to Ronald, these facts support an award of residential custody to him. There is no dispute that Ronald spent the majority of physical time with the boys since 2005. During this period, Susan provided either all or the bulk of the family's income. In addition, she was also responsible for satisfying the children's rudimentary needs and ensured the children received medical and dental care, enrolled them in extracurricular and religious activities, and coordinated their social activities. By acknowledging Susan's efforts, we do not devalue Ronald's contributions to the care of the children. He also actively participated in the boys' lives. He brought them home from school, supervised their homework sessions, and cooked and fed them dinner. He coached their sports teams and spent time engaged with them in other activities. As the trial court found, both Ronald and

Susan were very good parents, interested and involved in their children's daily lives. Nonetheless, we cannot say the trial court erred in finding that this factor favored Susan. Bongiorno concluded that Susan acted more consistently in the best interests of the children, worked to ensure they maintained their relationships with Ronald, and did not seek to undermine his role. In contrast, Ronald displayed a lenient parenting style and did not encourage the boys to follow expectations.

¶ 31 Lastly, Ronald contends that the eighth factor, his willingness and ability to facilitate and encourage a close relationship between Susan and the boys, favors him. He points for support to his concessions to Susan's requests to drive the children to school and to religious classes, responsibilities he had previously undertaken. He also testified that he urged Susan to attend the game sessions in which he and the boys participated on Sundays. While these facts speak to his willingness, there was contrary testimony that he attempted to undermine Susan in front of the children and made indirectly disparaging remarks, for example, suggesting that she had abandoned them at the soccer field. Bongiorno testified that Ronald worked to undermine Susan's parenting efforts, a consideration that weighs against Ronald. We also consider Bongiorno's testimony that Ronald requested sole custody and Susan requested joint custody as indicative of their perspectives and ability to cooperate. We find this factor favors Susan.

¶ 32 Moreover, we find the record supports that Ronald and Susan, at least as far as concerns their children, are able to display an unusual ability to communicate, a factor that warrants a joint custody award. Both Susan and Ronald, as well as Bongiorno, testified that the parties were in agreement regarding the children's medical, religious, and social upbringing. The areas of conflict were minimal and reflective of differing parenting styles. They did not establish an inability of Susan and Ronald to communicate effectively about their children. To the contrary, the children were excelling

academically and were involved in a variety of extracurricular activities.

¶ 33 We find that the trial court’s award of residential custody to Susan was not against the manifest weight of the evidence.

¶ 34 The third issue Ronald raises on appeal is whether the trial court erred in not ordering Susan to pay him maintenance. He submits that a maintenance award is supported by the Act’s statutory factors and required to allow him to keep the standard of living he and Susan established during their marriage.

¶ 35 In determining whether to award maintenance, the trial court should consider the following factors:

“(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 that 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 the 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 (West 2008).

¶ 36 A party does not have an absolute right to maintenance and an award should “mainly be reserved for circumstances of necessity.” *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390 (2008). When the party from whom maintenance is sought has sufficient assets to meet her own needs and the needs of her former husband, the party seeking maintenance should not be required to sell his assets or impair capital to maintain himself in the standard of living established in the marriage. *In re Marriage of Drury*, 317 Ill. App. 3d 201, 207 (2000). We will not reverse a trial court’s denial of maintenance absent an abuse of discretion. *Bratcher*, 383 Ill. App. 3d at 390.

¶ 37 The statutory factors do not support an award of maintenance to Ronald. The trial court distributed the couple's property equally, with the award of the marital residence to Ronald balanced by the award to Susan of her Caterpillar 401K savings. We acknowledge the disparity in the parties' incomes but note that Ronald's education and prior job history establish he has the ability to earn an substantially higher income than he currently earns. The trial court found Ronald underemployed, although it ultimately agreed with Ronald that he should not be required to keep a job search diary. Ronald testified that he was not seeking work because he was satisfied with his position as study hall supervisor. Between his school position and his income from "house flipping," he anticipated he would earn enough to adequately care for himself and the boys. Moreover, the parties' financial affidavits and supporting documents are not included in the record on appeal. We thus accept that the trial court examined the facts and properly applied the law in denying maintenance. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (when appellant fails to present an adequate record on appeal, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis").

¶ 38 For the four years prior to the trial, Ronald opted not to maintain full-time employment, and ultimately ended up with a part-time, nine-month position at the boys' school. Because the hours of Ronald's position coincided with the school hours of the boys, he has been able to bring them home after school, drive them to extracurricular activities, and feed them dinner most week nights. As Ronald points out, the years he has acted as the boys' caretaker saved the parties' daycare expenses, but at the expense of his full-time employment, with its higher salary. Also included in this factor is our consideration that Ronald earned his undergraduate degree during the marriage by foregoing work and attending school full-time. By all accounts, Ronald has the necessary education

and skills to obtain full-time employment commensurate with his background if he requires greater income than his current salary.

¶ 39 We consider the standard of living established by the parties during the marriage was modest. Susan and Ronald spent considerable time engaged in their children's daily and extracurricular activities. They saved for their retirements. They did not spend lavishly. We acknowledge both Susan and Ronald will experience some change in their standard of living as a result of the dissolution of their marriage. Arguably, Ronald may be required to alter his lifestyle more than Susan will based on their differing incomes. We note, however, that Ronald was awarded the marital house, for which a considerable portion of the mortgage has been paid. Susan will presumably be taking on a new mortgage, which will serve to lessen her available income. The parties were married for nearly 20 years. Both Susan and Ronald are approximately 50 years old, with no physical or emotional conditions. Based on the equal property division, any tax consequences are equitably allocated. As discussed above, Susan has been the primary wage earner throughout the marriage, which allowed Ronald to earn a degree as a full-time student and to work part-time at his children's school. His continued reluctance to seek full-time employment rather than a lack of education or job experience, (especially in light of the current ages of the children (16 & 14)) does not warrant an award of maintenance. Because the statutory factors do not support an award of maintenance, we find that the trial court did not err when it failed denied Ronald's maintenance request.

¶ 40 Lastly, we consider whether the trial court erred in denying Ronald's request that Susan contribute to his attorney fees. He argues that the parties were in different financial positions, with Susan earning substantially more than Ronald and able to contribute to his attorney fees whereas he is without sufficient funds to satisfy the payments.

¶ 41 The trial court may order a party to pay the opposing party's attorney fees after a hearing and consideration of the parties' financial circumstances. 750 ILCS 5/508(a) (West 2008). In deciding a petition for contribution, the trial court should grant an award based on the criteria for property division set forth in section 503(d) (750 ILCS 5/503(d) (West 2008)) of the Act, and if maintenance is awarded, also based on section 504 (750 ILCS 5/504 (West 2008)) of the Act. 750 ILCS 5/503(j)(2) (West 2008). Generally, parties are responsible for their own attorney fees. *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 709 (2006). A party who seeks contribution for his attorney fees must show he is unable to pay the fees and the other party is able to pay them. *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 479 (1999). We will not reverse a trial court's denial of attorney fees contribution absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). An abuse of discretion can be shown in cases where the evidence reveals a gross disparity in income and earning capacity and the financial inability of the spouse seeking relief to pay. *McGuire*, 305 Ill. App. 3d at 479.

¶ 42 We find no abuse of discretion in the trial court's denial of Ronald's request for attorney fees. Ronald relies on the disparity in income between him and Susan as justification for an attorney fee award. However, Ronald's education and prior job history establish he has the ability to earn a substantially higher income than he currently earns. Despite the trial court's order, Ronald refused to seek full-time employment on the basis that he was already employed as a part-time study hall supervisor at the local elementary school. Although the trial court vacated its order requiring Ronald to maintain a job search diary, it did not vacate its finding that Ronald was voluntarily underemployed in his current position. In our view, this factor weighs heavy in favor of the trial court's denial of Ronald's request for fees. Moreover, the trial court distributed the parties' marital

property equally, and as discussed above, rejected Ronald's maintenance request. Also as discussed above, Ronald has failed to include any exhibits in the record concerning the parties' finances. While there is some trial testimony regarding each party's finances, we do not consider it sufficient to warrant a finding that the trial court's determination was against the manifest weight of the evidence. Because Ronald has not satisfied his burden to submit a complete record on appeal, we presume that the trial court's consideration of the parties' financial resources was sufficient and its denial of Ronald's request for attorney fees proper. *Foutch*, 99 Ill. 2d at 391-92.

¶ 43 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 44 Affirmed.