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2012 IL App (3d) 110134-U

Order filed January 19, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

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In re MARRIAGE OF	)	Appeal from the Circuit Court
ANDY LINAJS,	)	of the 12th Judicial Circuit
	)	Will County, Illinois
Petitioner-Appellant,	)	
	)	Appeal No. 3-11-0134
and	)	Circuit No. 08 D 1821
	)	
VICTORIA M. LINAJS,	)	The Honorable
	)	Robert Brumund,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

¶ 1 Held: A trial court abuses its discretion if it fails to consider all the statutory factors set forth in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2010)) when fashioning a post-decree award of maintenance.

¶ 2 Petitioner, Andy Linajs, appeals from the trial court's order that he pay respondent, Victoria M. Linajs, maintenance in the amount of \$2000 per month. We reverse and remand for further proceedings.

¶ 3

## FACTS

¶ 4 Petitioner and respondent were married on November 16, 1990. The parties divorced on May 12, 2010. The judgment of dissolution awarded respondent 60% of the marital assets and 100% of the equity in the marital residence (minus a payment to petitioner in the amount of \$12,500). The judgment of dissolution reserved for three years the issue of respondent receiving maintenance.

¶ 5 On September 27, 2010, respondent brought a petition to set maintenance. Upon the conclusion of a two-day hearing, the trial court found respondent was entitled to maintenance. In fashioning its award, the court explained that it would not take into consideration “the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance” (750 ILCS 5/504(a)(1) (West 2010)). Specifically, the court stated:

“It’s obvious that at least as far as I’m concerned that I need not take into consideration factor number one of [section] 504. This is a post-judgment maintenance case that the parties agreed to reserve maintenance. They took that consider -- they took that into consideration in not barring, in barring or waiving maintenance from one party to the other taking into consideration the division of marital assets at the time of the divorce. So factor number one as far as I’m concerned is something that I don’t need to consider.”

¶ 6 Ultimately, the trial court ordered petitioner to pay \$ 2,000 per month maintenance and

provided that its maintenance award is reviewable in five years. Petitioner appeals.

¶ 7

#### ANALYSIS

¶ 8 At the outset, we note that respondent has failed to file a brief on appeal. “ ‘A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court’s judgment.’ ” *Frank v. Hawkins*, 383 Ill. App. 3d 799, 807 (2008), quoting *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1019 (2008). If the appellant’s brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court’s judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We reverse the trial court’s judgment because the petitioner has made a *prima facie* case of reversible error.

¶ 9 The sole issue before us is whether the trial court abused its discretion when fashioning its maintenance award.<sup>1</sup> Specifically, petitioner argues that the trial court’s decision to disregard subsection (1) of section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) constitutes an abuse of discretion. Because section 504(a) does not contain any exception which excuses the trial court from considering any of the twelve statutory factors set out in section 504(a) when fashioning a maintenance award, we agree.

¶ 10 Section 504(a) of the Act states that “the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just \*\*\*, in gross or for fixed or indefinite periods of time \*\*\*.” 750 ILCS 5/504(a) (West 2010). Section 504(a) provides that in granting maintenance awards, the trial court must consider the

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<sup>1</sup> We review the grant or denial of maintenance by an abuse of discretion standard. *In re Marriage of Morse*, 240 Ill. App. 3d 296, 307 (1993).

following relevant 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(a) (West 2010).

¶ 11 Here, the trial court abused its discretion in refusing to consider the statutory factor set forth in subsection (1) of section 504(a). Section 504(a) does not contain any exception which excuses the trial court from considering any of the above statutory factors when fashioning a maintenance award. Moreover, the supreme court has expressly held that unless the parties have agreed on the terms of modification and termination of maintenance in a court-approved written marital settlement agreement, the trial court “must consider the statutory factors set forth in subsections (1) through (12) of section 504(a) in post-decree modifications of maintenance.”

*Blom v. Koster*, 235 Ill. 2d 21, 31 (2009)

¶ 12 While we recognize that the instant case presents us with a question regarding a post-decree determination of an initial maintenance award and not an issue regarding a post-decree modification or termination of a maintenance award, we find this distinction to be of no consequence. Because section 504(a) is devoid of any exception to the contrary, we hold that the trial court is required to consider all twelve statutory factors announced in section 504(a) regardless of whether: (1) the dissolution of judgment has or has not been entered, and (2) the trial court is determining an initial award of maintenance or simply modifying or terminating an

existing maintenance order.<sup>2</sup> See 750 ILCS 5/504(a) (West 2010).

¶ 13 For the foregoing reasons, we reverse the trial court's maintenance award and remand the matter for further proceedings.

¶ 14 Reversed and remanded.

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<sup>2</sup> We acknowledge that section 510(a-5) provides *additional* factors for the trial court to consider in determining whether modification or termination of maintenance is warranted. See 750 ILCS 5/510(a-5) (West 2010).