

No. 1-12-0606

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 THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

CAROL BRAUN,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County
)	
v.)	No. 07 D5 30878
)	
TERRENCE BARTOLINI,)	The Honorable
)	Patrick Murphy,
Respondent- Appellant.)	Judge Presiding.

PRESIDING JUSTICE Harris delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

ORDER

- ¶ 1 **Held:** The trial court's determination to award petitioner a total of \$480,000 maintenance in gross is affirmed where the parties had been married almost 26 years, the parties' successful dental business was granted to respondent, and petitioner chose a less lucrative career path in order to take care of their children.
- ¶ 2 Respondent Terrence Bartolini appeals the order of the circuit court denying his motion to reconsider the court's ruling awarding petitioner Carol Braun maintenance in the amount of

\$4,000 per month for 120 months. On appeal, Bartolini contends the trial court erred in denying his motion to reconsider the award because the award does not take into account the fact that Braun chose to remain underemployed during the marriage, and provides no incentive for Braun to seek employment commensurate with her education and training. For the following reasons, we affirm.

¶ 3

JURISDICTION

¶ 4 The trial court entered a judgment for dissolution of marriage on July 8, 2010. Bartolini filed a motion to reconsider on August 4, 2010, and the trial court denied the motion on January 27, 2012. Bartolini filed this notice of appeal on February 23, 2012. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5

BACKGROUND

¶ 6 Bartolini and Braun married on September 30, 1984, and had three children. At the time of the entry of judgment for dissolution of marriage on July 8, 2010, daughter Alyssa was a senior at the University of Illinois in Champaign, daughter Lindsay was a freshman at St. Xavier College in Oak Lawn, and son Kyle was a junior at Brother Rice High School in Chicago.

¶ 7 Both parties are licensed dentists. During their marriage, they owned a dental practice known as "The Ultimate Smile" in Palos Heights, Illinois. In the year preceding the entry of judgment, Bartolini earned a gross income of \$185,269.18 at "The Ultimate Smile" while Braun

earned \$45,074.20 working as a teacher in the dental program at Prairie State College.¹ Braun chose to work as an instructor because it allowed her to devote time to her children, particularly to Lindsay who is epileptic. According to Braun, Lindsay requires constant supervision and cannot live alone.

¶ 8 In awarding the marital assets the trial court awarded the largest asset, the dental business, to Bartolini so he could continue to earn a living as a dentist. Thus, the marital assets were split 60/40 in favor of Bartolini. However, the trial court awarded Braun a total of \$480,000 maintenance in gross which resulted in an overall property split of 54/46 in favor of Braun. The maintenance award consisted of \$4,000 per month for 120 months with \$2,000 per month taxable to Braun and deductible by Bartolini. Furthermore, only the \$2,000 taxable per month would be subject to modification.

¶ 9 Bartolini filed a motion to reconsider, alleging that his income subsequent to 2007 has been declining due to recent economic conditions and that the award essentially punishes Bartolini for Braun's decision to remain underemployed. The trial court affirmed the total maintenance award, but decreased Bartolini's monthly payment to \$3,000 per month with \$1,500 of that monthly payment taxable and modifiable. Bartolini filed this timely appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, Bartolini does not challenge the trial court's decision on his motion for

¹The record on appeal does not contain any of the evidentiary hearings from the dissolution proceeding. Both parties agreed in their respective briefs that these figures represent the gross income of the parties.

reconsideration to decrease his monthly maintenance payment from \$4,000 to \$3,000 per month. Instead, he alleges that the trial court erred in affirming the original award of \$480,000 maintenance in gross. Initially, we note that neither brief's statement of facts contain supporting citations to the record in violation of Illinois Supreme Court Rule 341(h)(6) (Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008)). Bartolini's brief also violates Rule 341(h)(9) (Ill. S. Ct. R. 341(h)(9) (eff. July 1, 2008)), which requires that the appellant's brief include an appendix that includes a table of contents, with page references, of the record on appeal. These rule violations alone are sufficient to waive Bartolini's argument on appeal. See *Liberty Mutual Fire Insurance Company v. Woodfield Mall, L.L.C.*, 407 Ill. App. 3d 372, 389 (2010).

¶ 12 Furthermore, although Bartolini challenges the original award of maintenance in gross, the record on appeal does not include a transcript of the trial court proceedings on the issue. The record does contain a transcript of the proceedings on Bartolini's motion to reconsider, but it does not contain the evidentiary findings of the trial court on the statutory factors relevant in determining maintenance. Under these circumstances, this court presumes that the orders and judgment of the trial court on the issue were "in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 13 Even on the merits, Bartolini does not prevail. Our standard of review regarding a denial of a motion to reconsider the trial court's previous application of existing law to unchanging facts is *de novo*. *Duresa v. Commonwealth Edison Company*, 348 Ill. App. 3d 90, 96 (2004). The propriety of a maintenance award is within the trial court's discretion and a reviewing court will not disturb that determination absent an abuse of discretion. *In re Marriage of Schneider*, 214

Ill. 2d 152, 173 (2005). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.*

¶ 14 As Bartolini argues in his brief, section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act), 750 ILCS 5/504(a) (West 2006), lists relevant factors to consider in determining maintenance, including:

"(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 foregone 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."

¶ 15 On appeal, however, Bartolini argues only that the trial court's award of maintenance in gross was error because Braun chose to be underemployed during their marriage and as a result of the award, Braun has no incentive to seek employment commensurate with her education and training. The parties were married almost 26 years and had three children, one of whom requires long-term care. At the hearings on the motion to reconsider, the trial court noted that Braun "gave up her dental career" so she could focus on her children. It also acknowledged that during the marriage the parties' dental business was "very successful" and the parties led a "very good lifestyle." It noted that Braun "could have claimed 50 percent of the business and she didn't and she stepped away from it and [Bartolini's] got to pay her off." Furthermore, the maintenance in gross award is akin to a property distribution creating a vested interest in the recipient. *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985). According to Braun, the trial court awarded the maintenance in gross as a means to distribute marital property more evenly because Bartolini was awarded the dental business. The trial court did not abuse its discretion in awarding Braun maintenance in gross totaling \$480,000.

¶ 16 The cases Bartolini cites in support are inapposite. *In re Marriage of McNeeley*, 117 Ill. App. 3d 320 (1983) and *In re Marriage of Gunn*, 233 Ill. App. 3d 165 (1992), involved the trial court's award of permanent maintenance which is not an issue before us. In *In re Marriage of*

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Smith, 150 Ill. App. 3d 34 (1986), the entire maintenance award was in gross and thus the entire award was unmodifiable. *In re Marriage of Seymour*, 206 Ill. App. 3d 506 (1990), involved a spouse who decided to change vocations from teacher to minister during the dissolution, and she faced decreased income because she chose to study rather than work as a teacher. In *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 972 (1992), the evidence showed that the spouse seeking rehabilitative maintenance, which the trial court denied, was "capable of meeting his own needs" without assistance.

¶ 17 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.