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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF MICHAEL PERLMAN,)	Appeal from the Circuit Court of Lake County.
)	
Petitioner-Appellee,)	
)	
and)	No. 07-D-1932
)	
JACLYN PERLMAN,)	Honorable
)	Veronica M. O'Malley,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court: (1) did not abuse its discretion in rejecting respondent's request that it determine any modification of maintenance for the year 2011 based on petitioner's annualized obligation, where the dissolution judgment specified varying monthly maintenance amounts; (2) abused its discretion in modifying petitioner's maintenance obligation by calculating the maintenance overpayment amount for the end of 2011 by utilizing petitioner's year-end, as opposed to (modified) annual, earnings; instead, the court should have found a \$1,500 underpayment; and (3) misstated in its order that the erroneous payment was for all of 2011, as opposed to only the year-end period. Affirmed in part, reversed in part, and remanded with directions.
- ¶ 2 Following dissolution of the parties' marriage, petitioner, Michael Perlman, petitioned for modification of his maintenance obligation to respondent, Jaclyn Perlman. The trial court modified

petitioner's maintenance obligation. Respondent appeals. We affirmed in part, reverse in part, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 The parties' marriage was dissolved on November 26, 2008. The marital settlement agreement that was incorporated into the dissolution judgment awarded respondent \$75,000 in yearly maintenance, commencing December 1, 2008. Petitioner, an accountant, would pay maintenance in equal installments on the second and sixteenth day of each month pursuant to the following schedule:

December	\$7,000
January	\$4,000
February	\$4,000
March	\$4,000
April	\$4,000
May	\$6,000
June	\$7,000
July	\$8,000
August	\$8,000
September	\$8,000
October	\$8,000
November	\$7,000

¶ 5 The payments were predicated on petitioner's \$356,134 gross annual income and respondent's \$10,000 gross annual income. The agreement stated that the payments would continue

until the occurrence of the first of the following events: (1) petitioner's death; (2) respondent's death; (3) respondent's remarriage; (4) respondent's cohabitation on a resident, conjugal basis (as determined by a court); or (5) November 30, 2015.

¶ 6 On October 12, 2011, petitioner petitioned for modification of the dissolution judgment, arguing that a substantial change in circumstances (*i.e.*, a substantial reduction in his income) warranted a reduction in his maintenance obligation. See 750 ILCS 5/510(a-5) (West 2010). He noted that his \$75,000 annual maintenance obligation equaled 21% of his annual gross income and was equal to the number of years of the parties' marriage at the time of their divorce. However, since the entry of the dissolution judgment, petitioner's income decreased (in 2010) to \$318,086. He argued that, for the year 2011, he was "on track" through the third quarter (*i.e.*, September 30, 2011) to earn about \$35,000 less than during the first three quarters of 2010. Petitioner did not object to continuing to pay 21% of his gross income in maintenance, but objected to the \$75,000 amount "when his income has dropped so precipitously from the amount he was earning at the time of the Judgment." He requested entry of an order requiring him to pay 21% of his gross income based upon his prior year's annual income.

¶ 7 Respondent filed a response, denying the allegations, and, separately, petitioned for indirect civil contempt, arguing that petitioner's November 2011 maintenance payments fell short of the amounts specified in the dissolution judgment. Respondent asserted that, instead of making two payments of \$3,500 that month, petitioner paid only \$2,500 in the first installment (*i.e.*, \$1,000 short of what he owed) and \$2,000 in the second installment (*i.e.*, \$1,500 short). She further asserted that her requests that petitioner forward the arrearage went unanswered and that petitioner's actions were wilful. Petitioner responded that, based on his reduced income, he had overpaid his support

obligations in 2011 by \$5,000 and that his income had decreased by \$70,000 since the dissolution judgment.

¶ 8 The parties stipulated that petitioner's 2011 gross annual income was \$285,000, that 21% of that amount was \$60,000, and that this equaled 12 monthly payments of \$5,000 each. Conceding that the modification petition was not filed until the fourth quarter of 2011, petitioner's counsel argued that the overpayment was "much less significant" and was only "a few hundred dollars" because petitioner's fourth quarter income was different than the income for the first 9 months of 2011. Counsel suggested that the court adjust the 2011 overpayment and "correct the problem" going forward.

¶ 9 Respondent objected on the basis that any modification could not predate petitioner's petition, which was filed on October 15, 2011. See 750 ILCS 5/510(a) (West 2010). By respondent's calculation, for 2011, petitioner owed her: 9.5 (representing 9 1/2 months) times \$6,250 (\$75,000 divided by 12 months), which equals \$59,375. Because he paid respondent only \$57,000, petitioner still owed \$2,375.

¶ 10 For the period October 12, to December 31, 2011, petitioner argued that, since his income for that period was \$36,000, he owed only 21% of that amount, or \$7,560, as maintenance. Further, as he had already paid \$11,000, he was due a \$3,440 credit. Respondent argued that petitioner should pay \$5,000 per month for the 2011 year-end period (\$5,000 time 2.5 months equals \$12,500). Because he had paid only \$11,000 and he owed, by her calculation, \$12,500, she requested a credit of \$1,500.

¶ 11 At the hearing, the trial court rejected respondent's argument that the installment schedule was only for convenience. "So what is before this Court is that we don't have just 75,000 a year.

We don't have that. We have a payment scale. He has to pay certain amounts every single month. And they vary. They vary as much as double in certain months." In a June 12, 2012, order, the trial court modified the dissolution judgment, ordering that petitioner, whose income is reported on a Schedule K-1 (presumably specifying his partnership income) from his accounting firm, owed as maintenance 21% of his gross income, payable in equal installments on the second and sixteenth days of each month and subject to two true-ups (in January of the following year to reflect petitioner's actual income the prior year, and in September, after his income tax returns are completed). Specifically, for 2012, the court calculated that 21% of petitioner's gross income was \$60,000 (based on an undisputed 2011 gross annual income of \$285,000) and that he owed \$5,000 per month (in two equal installments). Addressing 2011, the trial court determined that petitioner had overpaid respondent \$3,440. After noting that petitioner had already deducted \$1,000 from each payment for January and February 2012, it ordered that \$1,000 be deducted from his March 2012 payment and \$440 from his April 2012 obligation. Respondent appeals.

¶ 12

II. ANALYSIS

¶ 13 Respondent argues that the trial court abused its discretion in modifying petitioner's maintenance obligation. For the following reasons, we affirm in part, reverse in part, and remand with directions that the court's corrected order reflect an accurate period.

¶ 14 A trial court's decision to modify maintenance will not be disturbed on appeal absent a clear abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). A court abuses its discretion where no reasonable person would take the court's view. *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶29.

¶ 15 Under section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act), “[a]n order of maintenance may be modified or terminated only upon a showing of a substantial change in circumstances.” 750 ILCS 5/510(a-5) (West 2010). A “substantial change in circumstances” as required under section 510 of the Act means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed. *In re Marriage of Neuman*, 295 Ill. App. 3d 212, 214 (1998). The party seeking modification of a maintenance order has the burden of showing that a substantial change in circumstances has occurred. *In re Marriage of Logston*, 103 Ill. 2d 266, 287 (1984). Here, it is undisputed that petitioner’s income decreased and that, thus, there has been a substantial change in circumstances. What is at issue is the calculation of maintenance based on his reduced income.

¶ 16 Section 510(a) of the Act provides:

“[T]he provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification.” 750 ILCS 5/510(a) (West 2010).

Pursuant to the statute, “the earliest point to which retroactive modification of maintenance or support payments may be ordered is the date on which the nonmoving party receives ‘due notice’ from the moving party of the filing of the modification petition.” *In re Marriage of Hawking*, 240 Ill. App. 3d 419, 426 (1992).

¶ 17 Respondent argues that petitioner was only entitled to modification of maintenance payments going forward from October 12, 2011, the day he filed his petition to modify. Under section 510(a) of the Act, any payments that were required to be made prior to that day could not be modified. Respondent complains that the trial court’s order erroneously reduces the total maintenance due and

owing for the first 9 1/2 months of 2011 based upon an annual \$75,000 award, despite the court's acknowledgment that it could modify only from the date of petitioner's petition going forward. She further argues that the court erroneously permitted a reduction in maintenance prior to the petition's filing date "in violation of well accepted legal principles." She requests that we reverse the court's judgment and remand with directions that petitioner pay her \$3,443 for 2011, as well as the amounts deducted from the modified payments in 2012, or \$3,400.¹ Respondent explains that the graduated payment schedule in the dissolution judgment was established only for petitioner's convenience and that his actual maintenance obligation was \$75,000 divided by 12 months and multiplied by 9 1/2 months, equaling \$59,375, not \$57,000 as petitioner argues (and that respondent agrees petitioner actually did pay).

¶ 18 Petitioner, *pro se*, responds that, during the period January 1, through October 12, 2011, he paid \$57,000, which is exactly what the maintenance schedule required. He notes that, at the hearing, the court rejected respondent's argument that the installment schedule was only for convenience purposes.

¶ 19 We reject respondent's argument that, for the period January 1, through October 12, 2011, petitioner underpaid her \$3,443.² We agree with petitioner that the trial court did not abuse its

¹Respondent misstates the amount. The trial court calculated the overpayment as \$3,440, not \$3,400 as she states.

²As petitioner notes, respondent makes reference to \$3,443, whereas the actual difference between the parties' disputed figures should be \$2,375. We agree that the correct figure respondent should have quoted was \$2,375 (but we reject respondent's argument that there was any underpayment during this period).

discretion in rejecting respondent's request that it determine the breakdown of petitioner's \$75,000 annual maintenance obligation by looking at how that figure averaged each month, as opposed to the varied monthly installments specified in the dissolution judgment. There is no explicit statement in the judgment that the \$75,000 annual maintenance obligation was to be paid in equal installments or that the installment schedule therein was only for convenience purposes (due to the varying nature of petitioner's monthly income). To the contrary, inclusion of the schedule, without language limiting or qualifying it, reflects that petitioner owed varying amounts each month as reflected therein. Accordingly, because petitioner paid, pursuant to the schedule, all installments due through the date of the filing of his petition, we decline to hold that the court modified payments for the period prior to the date petitioner filed his petition.

¶ 20 As to the period October 12, to December 31, 2011, the parties do not dispute that petitioner earned \$36,000 during this period, that 21% of this amount is \$7,560, and that petitioner's actual payments to respondent for this period were \$11,000. The trial court determined that this resulted in an overpayment of \$3,440. Other than requesting a reversal of this portion of the court's order, we note that, in her briefs to this court, respondent does not advance any argument addressing *how* the court erred in its calculations for this period (although she did address this point at the hearing before the trial court). Therefore, arguably, her claim is forfeited. See, e.g., *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010) (court may find argument forfeited where it is undeveloped and where party provides no citation to relevant authority); see also Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). However, we decline to hold that it is forfeited and conclude that the trial court abused its discretion in utilizing only petitioner's year-end 2011 income (*i.e.*, the \$36,000) to calculate his maintenance obligation for this period. The court's decision erroneously resulted in

two different modified maintenance calculations. The calculations for the year-end 2011 period were not consistent with the court's finding that petitioner's modified maintenance obligation would be based on 21% of his *annual* income. It was stipulated that his 2011 income was \$285,000, that 21% of that amount was \$60,000, and that this equaled 12 monthly payments of \$5,000 each. Although the trial court's order imposed a \$5,000-per-month obligation on petitioner beginning in 2012, it did not do so for the period October 12, through December 31, 2011. We conclude that the court abused its discretion when it based the balance of 2011 maintenance on income only from October 12, through December 31, 2011; it should have based the reduction in maintenance on petitioner's entire 2011 income, which we note is exactly what he asked for in the trial court. Thus, the court should have determined that petitioner owed a total of \$12,500 for the 2011 year-end period and, given that he had already paid \$11,000 in maintenance for that period, he still owed \$1,500. We reverse the portion of the court's order where it found a \$3,440 overpayment and conclude that, instead, the court should have found a \$1,500 underpayment.

¶ 21 We further note that the trial court, in its order, misstated that the overpayment was for all of 2011, as opposed to the period October 12, to December 31, 2011. Accordingly, we remand with directions that the corrected order (showing a \$1,500 underpayment) reflect the accurate period.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed in part and reversed in part and the cause is remanded with directions.

¶ 24 Affirmed in part and reversed in part; cause remanded with directions.