

2013 IL App (2d) 130738-U
No. 2-13-0738
Order filed December 23, 2013_

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
SECOND DISTRICT

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|--------------------------|---|-------------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the Circuit Court |
| RUBINA A. TAHSEEN, |) | of Du Page County. |
| |) | |
| Petitioner-Appellee, |) | |
| |) | |
| and |) | No. 11-D-2352 |
| |) | |
| MOHAMMAD TAHSEEN, |) | Honorable |
| |) | Neal W. Cerne, |
| Respondent-Appellant. |) | Judge, Presiding. |

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Challenge to trial court's ruling suspending visitation was moot in light of subsequent order granting visitation; trial court's grant of maintenance was not an abuse of discretion.

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¶ 3 The respondent, Mohammed Tahseen, appeals from the judgment entered on May 31, 2013, dissolving his marriage with the petitioner, Rubina Tahseen. In his appeal, Mohammad initially raised two issues, arguing that (1) the trial court erred in suspending his visitation with his minor daughter, Talia, without making a finding of substantial endangerment, and (2) the trial court erred in granting Rubina rehabilitative maintenance.

¶ 4 However, at the same time he filed his reply brief, Mohammad filed a motion to supplement the record on appeal with an order entered by the trial court on November 22, 2013, granting Mohammad unsupervised visitation with Talia two days per week for several hours. Rubina filed a similar motion, attaching a certified copy of the order. We hereby grant the motions to supplement the record. Rubina also filed a motion suggesting that the visitation portion of the appeal had become moot following the entry of this order. Mohammad filed an objection arguing that the visitation issue is not moot because the November 22, 2013 order was a temporary visitation order that did not grant him all the visitation that he wanted.

¶ 5 We agree that the visitation issue is moot. “The existence of an actual controversy is an essential requisite to appellate jurisdiction, and courts of review will generally not decide abstract, hypothetical, or moot questions. *Steinbrecher v. Steinbrecher*, 197 Ill.2d 514, 523 (2001). An appeal is considered moot where it presents no actual controversy or where the issues have ceased to exist. *In re Andrea F.*, 208 Ill.2d 148, 156 (2003).” *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 149 (2004). Here, the trial court’s order allowing unsupervised visitation between Mohammad and Talia superseded its earlier order suspending Mohammad’s visitation with Talia (the order from which Mohammad appealed). This court (which can only review the trial court’s visitation order, not conduct our own determination of appropriate visitation) could not grant any further relief beyond vacating the earlier order and remanding for further proceedings. Here, Mohammad has already obtained this result through the entry of the November 22, 2013, order. Although Mohammad does not

like everything about the November 22, 2013, order, as he is not appealing from that order, we cannot address his concerns related to that order. *Webb v. First National Bank & Trust Co. of Barrington*, 139 Ill. App. 3d 806, 808-09 (1985). Thus, “intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party” (*Nienhouse* at 149-50), and the visitation issue is moot and may not be addressed by us. See *Ferguson v. Patton*, 2013 IL 112488, ¶¶ 21-23 (“the existence of a ‘justiciable matter’”—*i.e.*, one that is not moot—is “a prerequisite to the *** court’s subject matter jurisdiction under *** the Illinois Constitution”). Accordingly, this disposition addresses only the issue regarding maintenance.

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BACKGROUND

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Mohammad and Rubina were married in May 1994. The parties have two children: Sabrina, born April 21, 1995, and Talia, born September 4, 1998. On October 28, 2011, Rubina filed a petition for dissolution. Sabrina graduated from high school in May 2013 and was emancipated when the judgment for dissolution was entered. Talia thus is the sole minor child.

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The dissolution trial took place between January and May of 2013, and the facts below are taken from the record of that trial. Mohammad is an information technology professional. He works for Magellan Health Systems, earning a gross annual salary of about \$110,000 with the possibility of bonuses. His net annual income was \$68,880.

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Rubina is a medical doctor. From 2003 through 2008, she worked as an internal medicine physician with the South Suburban Medical Group (South Suburban). During this time her gross annual earnings were as much as \$200,000 per year. Despite repeated efforts, however, she was unable to pass the board examination in internal medicine, as required for continued work with South Suburban. In 2009, Rubina left South Suburban and formed her own practice, West Suburban Medical Group. She earned \$32,000 from the practice in 2009; and earned \$50,000 (out of gross income for the practice of \$143,000) in 2010. In 2011, she saw patients five days per week and the gross earnings of the practice were between \$114,000 and \$118,000. The 2011 tax return had not yet been filed as of the time of trial.

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From 2010 through September 29, 2011 (shortly before Rubina filed for dissolution), Mohammad assisted her with the practice, scheduling patients and sending, tracking, and paying the bills for the practice. Mohammad testified that in September 2011, he stopped doing the billing for the practice, but he had purchased equipment including an electronic medical records system and a voice recognition system to help with dictation notes, and he left this equipment in place and showed Rubina how to use it.

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Rubina testified that she had experienced depression of varying intensities for much of her life, from when she was in medical school to the time of trial. In November 2010, Rubina underwent psychological testing and was diagnosed with functional attention disorder;

functional memory disorder due to acute stress reaction; and a single episode (mild) of major depression. A further evaluation was completed in October 2011, which revealed an attention deficit/hyperactivity disorder (ADHD) score of 3.62, described by the evaluator as a “significant” score; impairment of attention and memory function due to acute stress reaction; and continuing clinical depression. Rubina testified that her ADHD made her distracted, so that it was difficult for her to focus on anything for a long period and to finish tasks; her stress made her forgetful, weak, and tired; and her depression resulted in low energy levels. Rubina received professional services for counseling to deal with her stress and depression, for help with her ADHD, and for medication monitoring (she took about 20 medications daily, for thyroid replacement, high blood pressure, allergies, diabetes, depression, ADHD, and high cholesterol). Dr. Ali, a psychiatrist, wrote a letter suggesting that she stop working for three months beginning in February 2013. At the time of trial, she was seeing patients only two days per week.

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Rubina projected her monthly living expenses at \$11,000 per month. Mohammad’s project monthly expenses were \$9,000. In closing arguments at trial, Rubina requested permanent maintenance of \$2,000 per month, while Mohammad suggested that she receive that amount but only for one year.

¶ 1 3
In issuing its judgment for dissolution, the trial court prepared a lengthy order that discussed the evidence in detail and made specific findings. The trial court found that Rubina’s ADHD

and depression decreased her ability to document her work and receive payment, and thus affected the profitability of her practice, although it did not affect her ability to treat patients. However, the trial court also found that she had the ability to support herself in the future. The trial court granted maintenance of \$1,000 per month for two years. Mohammad then filed this appeal.

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ANALYSIS

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An award of maintenance is within the trial court's discretion, and we will not reverse the trial court's determination unless it is clear that it has abused that discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would take the view of the trial court. *Id.* The party challenging the award of maintenance bears the burden of showing such an abuse of discretion. *Id.*

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Mohammad argues that the trial court abused its discretion in setting appropriate maintenance because it overlooked evidence that Rubina could earn a significant income despite her longstanding medical conditions. He points to the fact that Rubina earned about \$200,000 per year during the five years she worked for South Suburban, and her income from her own practice was increasing until she filed for divorce. However, the record does not reflect that the trial court overlooked this evidence; rather, it appropriately discounted it. It was undisputed that Rubina could not continue her former high earnings at South Suburban without passing her board examinations within a set time period, which she was unable to do.

Moreover, there was evidence of an innocent reason for the decline in Rubina’s income from her practice following her filing for dissolution, including evidence of a worsening of her medical conditions that affected her ability to perform the administrative tasks of her practice, and that Mohammad was no longer performing those tasks for her. We therefore find the cases cited by Mohammad distinguishable. Given that there was conflicting evidence regarding Rubina’s ability to support herself and the trial court’s determination of this issue was not unreasonable, we find no abuse of discretion.

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Moreover, we note that Mohammad himself argued in closing that Rubina should receive the same amount of maintenance that he now complains of. He argued that she should receive the amount she requested (\$2,000 per month) for 12 months, a total of \$24,000. This is the same amount of maintenance that the trial court awarded, except spread over two years rather than one. “[A] party cannot complain of error which that party induced the court to make or to which that party consented.” *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004).

¶ 18 CONCLUSION

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The appellant’s and appellee’s motions to supplement the record are granted. The appellee’s motion to suggest the mootness of the visitation issue is granted. Because we find the issue of visitation to be moot, and that issue was the sole reason for placing this appeal on the accelerated docket pursuant to Supreme Court Rule 311(a) (eff. Feb. 26, 2010), the appeal is hereby removed from the accelerated docket. In all other respects, the judgment of the circuit court of

Du Page County is affirmed.

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Affirmed.