

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).

2013 IL App (3d) 120534-U

Order filed May 29, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
ALICIA M. DUBRAVEC,)	Kankakee County, Illinois,
)	
Petitioner-Appellee,)	Appeal No. 3-12-0534
)	Circuit No. 08-D-409
v.)	
)	
)	
DOMINIK B. DUBRAVEC,)	Honorable
)	James B. Kinzer,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in its distribution of the marital assets and debts of the parties, or by ordering husband to pay child support, maintenance, and payments pertaining to the marital home until the date the marital residence could be sold.

¶ 2 Respondent, Dominik B. Dubravec, appeals a dissolution order distributing the marital assets and debts of the parties, and awarding petitioner, Alicia M. Dubravec, maintenance and child support. In addition, the court ordered Dominik to continue making the mortgage payments on the marital residence until the date of sale. We affirm.

¶ 3

FACTS

¶ 4 The parties were married on July 21, 1984, and four children were born during this marriage. During the course of the 27-year marriage, Alicia primarily stayed at home to raise the children while Dominik became a successful periodontist with his own practice. At the time of the dissolution, two of the couple's children were emancipated, one child attended college, and the youngest child, a junior in high school, resided with Alicia in the marital home.

¶ 5 Alicia filed a petition for dissolution of marriage on October 15, 2008. On April 9, 2009, the court ordered Dominik to pay \$12,500 per month in temporary support, but later reduced this amount to \$8,000 on May 26, 2011.

¶ 6 The parties engaged in lengthy pretrial discovery, in part because each party hired an expert to perform a business valuation of Dominik's periodontal practice. Alicia's expert, William S. Condon, valued the periodontal practice at \$346,000, exclusive of professional goodwill, in a report dated December 31, 2009. One year later, Dominik's expert, Bruce Richman, valued the periodontal practice at just \$146,000, also exclusive professional goodwill, in a report date December 31, 2010.

¶ 7 Although the parties could not agree on the value of the periodontal practice, they were able to agree on values of several other significant marital assets including: \$269,347 in equity for the marital residence, \$232,500 for two Michigan lots, \$764,925.75 in the various retirement accounts, and \$665,000 for the "Abbey Woods" condo.¹ The parties also agreed that a balance of \$226,343 remained on the mortgage for the marital home the couple purchased in 2001.

¹The "Abby Woods" condo is the name given to the Frankfort office, which Dominik purchased in 2008 in an effort to expand his practice.

¶ 8 In addition to their inability to agree on the value of the periodontal practice, the parties were unable to reach an agreement concerning the appropriate amount for maintenance, child support, college expenses, division of marital property, payment of marital debt, and contribution to attorney fees and court costs. The trial to resolve these issues began on August 1, 2011, and the trial took place over 15 non-consecutive days. The testimony established the facts set forth below.

¶ 9 Dominik graduated from the University of Illinois in 1982. The couple married in 1984, and Dominik graduated from Loyola University Chicago's dental school in 1986. After graduating from dental school, Dominik first worked as a research fellow at Harvard University and then taught periodontics at the University of Chicago for the next three years. Dominik stated that he specialized in periodontics, which was a dental speciality encompassing areas such as oral disease, regenerative procedures, and repair procedures.

¶ 10 Alicia performed some secretarial and childcare services to pay the marital bills while Dominik attended school. After the oldest child was born in 1987, she stopped performing administrative work and instead engaged in childcare services in exchange for the couple's rent. After Dominik purchased his first periodontal practice in Kankakee in 1991, she assisted him with running the practice, but she completely stopped working outside of the home shortly after the birth of their fourth child in 1995.

¶ 11 Dominik later purchased an interest in a Chicago Heights practice in 1996. He abandoned the Chicago Heights practice in 2008 due to the decline of this practice and opened another office in Frankfort in 2008 after borrowing approximately \$2,200,000, for the Frankfort

office, which included new office equipment and the Abby Woods condo. At the time of trial, the remaining debt on the practice, including the condo, was \$2,164,000.

¶ 12 Dominik stated that nearly all of his business resulted from referrals from 10 or 12 general dentists. Consequently, Dominik admitted his practices had sizeable business expenses for gifts, entertainment, and trips for those referring dentists. He also stated that most insurance plans did not cover periodontal procedures, and due to the recent economy, his practice was in decline because more patients elected to postpone or forego periodontal procedures.

¶ 13 Teresa Stell, the business manager, did the daily accounting at the periodontal practice, but Daniel Borschnack, Dominik's accountant, was responsible for completing the taxes for the business at the end of the year. Borschnack prepared an exhibit which he entitled "Determination of Net Cash Income," and that exhibit listed the monthly business income. According to Borschnack, Dominik had a monthly income of \$18,979 in 2008, \$17,281 in 2009, \$8,233 in 2010, and \$10,849 in 2011.

¶ 14 Borschnack testified and explained his methods differed from the methods used by plaintiff's valuation expert, Condon. For example, when calculating net monthly income, Borschnack subtracted non-deductible business expenses such as meals, entertainment, and country club dues from the total income. In addition, for tax purposes, Borschnack subtracted \$9,886 of new office equipment from 2010 instead of depreciating the office equipment over a period of years. However, Borschnack agreed with Condon's decision to calculate some depreciation back into Dominik's cash income in the amount of \$174,454 for 2010. Also during Borschnack's testimony, Alicia presented an exhibit which demonstrated that the "cash flow"

from the periodontal practice in 2010 was \$296,229, including a \$114,000 refund from the Internal Revenue Service from 2008 and 2009.

¶ 15 Alicia hoped to remain in the marital home until their youngest child graduated high school in two years, and then agreed the home should be sold. Since his separation from Alicia, Dominik had purchased a two bedroom townhouse that cost approximately \$400,000. He had also taken out a loan of approximately \$85,000 in order to furnish the townhouse.

¶ 16 Alicia indicated she planned to return to school part time and earn a degree in business administration. At the time of trial, Alicia earned a monthly income of \$1,016 performing approximately 15 to 20 hours per week for administrative services.

¶ 17 During closing arguments, Alicia's attorney argued Dominik's personal income was closer to \$300,000 per year based on the amount he had withdrawn from the practice in 2009 and 2010. Counsel requested \$10,000 per month in unallocated child support and maintenance.

¶ 18 In contrast, Dominik's attorney argued that the \$300,000 cash flow was not accurate because this amount included a "one-time" \$100,000 income tax refund. He proposed Alicia receive \$2,170 in child support and \$2,000 per month in maintenance and requested a division of the marital assets in the amount of 54% in favor of Alicia. Dominik's counsel also stated, "[Dominik's] gonna get stuck with the office condo, and 100 percent of that. And he's also gonna get stuck with 100 percent of the debt related to that. Because you can't do anything else but do that, in my opinion." He also added, "Now, the only—the only solution, Judge, of course, is for him to take the practice and pay the bill. We know that."

¶ 19 The trial court issued a written order on December 5, 2011, and found that each witness was credible "so far as he or she went." In evaluating the periodontal practice, the court noted

that through 2007, Dominik received increasing amounts of income culminating in his decision to open the new Frankfort office. However, since 2009, business income dropped by about 12% due to the fact that many of the elective periodontal procedures were not covered by insurance, and many patients chose to forego procedures due to the economy. The court further found Dominik's marketing efforts were reasonable.

¶ 20 The court stated the remaining debt on the practice was \$2,164,000 and the Abby Woods condo had a value of \$665,000. The court accepted Richman's valuation of the practice at \$146,000, which, combined with value of the condo, gave the practice a value of -\$970,000.

¶ 21 Based on agreed values, the court added together the property assets, the financial accounts, and the retirement accounts and found the parties possessed a total of \$1,299,775 in assets. Alicia received \$774,008 in assets, including half the equity in the home, various financial accounts, and approximately 83% of the total retirement accounts. Dominik received \$525,767 in assets, including half the equity in the marital home, the Michigan properties, the equity in the townhouse he had purchased, another financial account, and approximately 17% of the retirement accounts.

¶ 22 The trial court determined Dominik's monthly net income for purposes of child support to be \$12,758. To reach this amount the court relied on Borschnack's exhibit entitled "Determination of Net Cash Income" which listed the average monthly income, after adjusting for depreciation, to be \$10,849 for 2011. The court then increased this amount by adding back car expenses which were paid by the business but not necessary for the production of business income. The court also added \$1,948 worth of yearly country club expenses, and arrived at a

monthly net income of \$12,758. The court applied the statutory 20% of that amount for child support and set support at \$2,551.60 per month.

¶ 23 The court also ruled that an award of permanent maintenance was appropriate, given the disparate education and income levels of the parties, and the length of the marriage. Based on these factors, the court determined an appropriate amount of maintenance to be \$3,100 a month.

¶ 24 The court further ordered Dominik to pay \$2,856.71 per month for the mortgage, insurance, and taxes on the marital home until the home was sold and ordered the proceeds to be evenly divided between the parties. The trial court's order stated that Dominik was to continue paying the mortgage because he valued his credit rating, and Alicia had shown limited ability to manage her finances during the pendency of the divorce.

¶ 25 After requesting an unspecified amount in attorneys fees, Alicia was awarded \$8,500 in attorney fees and costs. This left her with the balance of approximately \$80,000 for attorney fees and expert fees of \$77,105.

¶ 26 Dominik filed a posttrial motion on March 9, 2012, alleging the trial court erred by not deducting expenses from his income that were reasonable and necessary for the production of income. In an order dated May 31, 2012, the court explained that, although Dominik owed a substantial amount of debt, the court anticipated that once the last minor child graduated high school, the \$2,551 being paid in child support would be allocated toward debt repayment. The court also explained Dominik "had demonstrated an ability to manage his income and debt repayments from net income of the business during the pendency of the divorce." The trial court ultimately denied Dominik's posttrial motion. Dominik appeals.

¶ 27

ANALYSIS

¶ 28 On appeal, Dominik argues the trial court abused its discretion when dividing the marital assets and debt, and determining the amount of child support and maintenance. Alicia argues the trial court's calculations were correct and did not amount to an abuse of discretion. We affirm.

¶ 29 First, Dominik argues the trial court abused its discretion by dividing marital assets in a 60/40 split that favored Alicia. An abuse of discretion occurs when no reasonable person would have divided the marital property as the trial court did. *Marriage of Werries*, 247 Ill. App. 3d 639, 649 (1993).

¶ 30 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (the Act), lists 12 factors the court should consider when dividing marital property, including the contributions of each party to the marriage, the duration of the marriage, the economic circumstances of each party, the needs of each party, and the opportunity of each party to acquire future income and capital. 750 ILCS 5/503(d) (West 2010). The assets do not have to be split evenly as long as they are divided fairly. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042 (2008).

¶ 31 In this case, the court divided the marital assets 60/40 in favor of Alicia. While the court did not require the parties to sell the practice and equally divide the remaining debt, the court did require the sale of the marital home. In fact, the trial court's division of assets closely approximated the proposal presented to the court by Dominik's counsel, who proposed Alicia should receive 54% of the assets, leaving Dominik with 46% and the negative net value of the business. An unequal distribution of assets was proper given that Dominik has more potential to increase his income by retaining the business.

¶ 32 Next, Dominik argues the trial court abused its discretion by assigning him the entirety of the debt associated with the practice. The case law provides that “[w]here one party is

substantially responsible for the creation of the debt and has a substantially greater capacity to earn money, it is not an abuse of discretion for the trial court to assign the overwhelming majority of debt to that party.” *Werries*, 247 Ill. App. 3d at 649-50. In this case, it is undisputed that Dominik incurred a substantial amount of debt to acquire new office space in Frankfort. Moreover, this debt was specifically considered when calculating the value of his practice. As previously stated, Dominik desired to have the court award him the practice, in spite of the debt.

¶ 33 Since Dominik has a greater capacity to pay off the debt, it would be unfair to saddle Alicia with the business debt under these circumstances. See *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071-1072 (unequal distribution of assets in favor of wife was not an abuse of discretion, even where husband received the majority of the debt, in part because husband had capacity to earn a much higher income than wife). Moreover, once the couple’s minor child finishes high school and the sale of the marital home occurs, Dominik would theoretically be able to allocate \$5,408.31 toward repayment of the existing business debt. We do not consider this division of debt to be an abuse of discretion, especially in light of the fact that Alicia will have to pay approximately \$160,000 worth of attorney fees and costs without assistance from Dominik. Accordingly, we conclude the trial court did not abuse its discretion by assigning Dominik the balance of the debt associated with his practice.

¶ 34 Further, Dominik submits the trial court improperly over-estimated his monthly income for purposes of child support. We conclude the court relied on Borschnack’s exhibit entitled “Determination of Net Cash Income” which listed Dominik’s average monthly income, after adjusting for depreciation, to be \$10,849 for 2011 and then increased this amount by adding the car and country club expenses paid for Dominik by the business, which we agree were not

necessary for the production of income. We note that there were many other business perks, characterized as expenses, which the court did not use to increase Dominik's monthly income.

¶ 35 Further, the court began its calculations by relying on Borschnack's estimation of Dominik's income for 2011 to be \$10,849, which included a yearly positive adjustment for depreciation. Based on this record, we conclude the court employed a measured approach and did not abuse its discretion when calculating total yearly income of \$153,096, or \$12,758 per month. Since section 505(a) of the Act states that child support shall be 20% of the monthly income, the \$2,551.60 is appropriate. 750 ILCS 5/505(a)(1) (West 2010). Thus, we find no reason to disturb the court's findings with respect to child support.

¶ 36 Finally, Dominik contends that the trial court's decision ordering him to pay child support, monthly maintenance of \$3,100, and the expenses associated with the marital home amounted to an abuse of discretion. Given the court's finding that Alicia demonstrated difficulties handling financial arrangements during the pendency of the divorce, we conclude that ordering him to maintain this significant asset with equity of \$269,347 until the date of sale was not an abuse of discretion.

¶ 37 Section 504 of the Act lists several factors the court must consider when determining the amount of maintenance. 750 ILCS 5/504(a) (West 2010). These factors include the income and property of each party, the needs of each party, the present and future earning capacity of each party, forgone educational or career opportunities due to the marriage, the standard of living established during the marriage, the duration of the marriage, and any other factor the court deems proper. *Id.* The trial court's decision regarding maintenance is presumed to be correct. *In re Marriage of Krane*, 288 Ill. 3d 608, 618 (1997).

¶ 38 Interestingly, Dominik does not specifically challenge the maintenance obligation by claiming the court improperly balanced the statutory factors. 750 ILCS 5/504(a) (West 2010). We note that Dominik’s maintenance obligation itself is only \$3,100 or 25% of his income. See *In re Marriage of Rogers*, 352 Ill. App. 3d 896, 899-900 (2004) (holding that maintenance award, which was 27% of total income, was reasonable in order to equalize incomes of the parties after a 36-year marriage).

¶ 39 In addition, the remainder of the factors supported an award of maintenance for Alicia, including the length of the marriage, disparate income and education levels, and the standard of living established during the marriage. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 303-04 (2010). We conclude this amount is not unreasonable given that the parties enjoyed a high standard of living during the marriage and Alicia’s current skills and education level will not allow her to earn a significant income without assistance from Dominik.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 42 Affirmed.