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2014 IL App (3d) 130478-U

Order filed June 27, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
MICHAEL HOLZWARTH,	)	Will County, Illinois,
	)	
Petitioner-Appellant,	)	
	)	Appeal No. 3-13-0478
and	)	Circuit No. 05-D-437
	)	
KRISTINE HOLZWARTH,	)	
	)	Honorable
Respondent-Appellee.	)	Robert J. Baron
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The trial court's change of the maintenance award from rehabilitative to permanent was not an abuse of discretion; (2) the court did not make a disability finding; and (3) the amount of maintenance awarded was reasonable.

¶ 2 Petitioner, Michael Holzwarth, appeals the trial court's May 30, 2013, order awarding permanent maintenance to respondent, Kristine Holzwarth. On appeal, Michael argues: (1) the trial court erred in changing the maintenance award from rehabilitative to permanent without a

proper legal basis or sufficient evidence; (2) the court abused its discretion in finding that Kristine was permanently disabled; and (3) the amount of maintenance awarded was unreasonable. We affirm.

¶ 3 FACTS

¶ 4 On January 11, 2007, the trial court entered a judgment for dissolution of marriage. The dissolution order stated that Michael and Kristine were married on August 31, 1996. Two children were born to the parties during the marriage, and Michael was awarded residential custody of the children. The court reserved for future review the issues of maintenance, child support, and Kristine's employment.

¶ 5 On July 16, 2007, the court ordered Michael to pay Kristine $1,000 per month for rehabilitative maintenance for a period of 36 months. On January 14, 2009, the court increased the maintenance award to $2,500 per month. On August 3, 2010, the court ordered Michael to continue paying maintenance to Kristine in the amount of $2,500 per month. The court also ordered Kristine to provide copies of her medical records and Illinois Department of Employment Security job search documents to opposing counsel.

¶ 6 In September 2010, Michael filed a motion to reconsider the court's extension of maintenance payments. Kristine filed a motion in opposition that included a letter from her physician stating that Kristine had pituitary surgery in 2004, but had a clinical recurrence of Cushing's disease. The physician's letter concluded "I am confident that [Kristine] does have recurrent Cushing's disease." Kristine also submitted her determination of entitlement to emergency unemployment compensation. The document stated Kristine was last employed by Dr. Charles E. Miller, on May 13, 2009.

¶ 7 On July 26, 2012, Kristine filed a motion to increase and/or extend maintenance. Kristine submitted an income and expenses affidavit with her motion which reported $2,500 in monthly income and $2,584 in monthly expenses.

¶ 8 On May 23, 2013, the court held a hearing on Kristine's motion. Kristine testified that she was unable to pay all of her bills and she was in need of additional maintenance because of her medical conditions. Kristine's medical history included diagnoses of and treatment for the following: a brain tumor in 2003; Cushing's disease in 2004; a brain lesion in 2009; recurrent Cushing's disease in 2010; diverticulitis in 2011; type two diabetes in 2012; knee problems in 2012; and hypothyroidism in 2013. Kristine's health made obtaining employment difficult because her condition changed from day to day and was aggravated by stress. As a result of her medical conditions, Kristine's doctor restricted her work to part-time positions. Kristine said that most people with Cushing's disease did not work. Nevertheless, Kristine searched for employment on a daily basis and applied to open positions regularly.

¶ 9 During the marriage, Kristine was predominantly a stay-at-home mother, lived in a 3,000 square feet home, and was part of an upper middle class family. Since the dissolution, Kristine lived in a room at a boarding house and paid $500 per month in rent. Kristine owned a 2010 Kia Forte with a monthly payment of $379.65, and she paid $590 in health insurance premiums. Kristine estimated that she had $20,000 in debt. Kristine's expenses also included $150 for her cellular telephone plan and a health club membership. Kristine explained that she required a more expensive cellular telephone plan because she used the telephone to search for jobs and the parties' son was included on her plan. During visitations with the children, Kristine took the children to the health club, but did not independently use the membership.

¶ 10 Since the dissolution, Kristine had worked at a YMCA in 2007, Precision Foods in 2008,

and Dr. Miller's office from 2008 to 2009. From 2009 until 2011, Kristine collected unemployment and was unable to qualify for disability payments.

¶ 11 Before the hearing, Kristine accepted an unpaid position as a receptionist for her attorney. In this position, Kristine worked approximately five hours per day, five days per week, for three weeks. During this period, Kristine did not apply to any paid positions, but used the volunteer position to determine how much work her body could tolerate. Kristine's job duties were to "keep everybody off of [the attorney's] back and try to make sure everybody [knew] what [was] going on." Kristine possessed a high school degree and a certificate in data entry, tourism, and travel.

¶ 12 Michael testified that since the dissolution, he had remarried. Michael's income and expenses affidavit only included items that he paid because his new wife paid the remaining expenses, including the taxes and mortgage. Michael said that he earned a salary of $101,750 per year, and although he was uncertain, he thought that his new wife earned a similar or greater salary. Michael contributed $848 per month to his 401(k) plan and said that he most likely would use the money to pay for the college tuition of the parties' children. Michael did not have any other resources to pay the prospective tuition from and thought that he could not count on any contributions from Kristine. Michael understood that he was going to be paying maintenance but asked the court to set a review date.

¶ 13 On May 30, 2013, the trial court entered an order awarding Kristine $3,000 per month in permanent maintenance. In the order, the court found that Kristine's standard of living was "far below the level during her marriage." In comparison, Michael's income had increased and he was living comfortably while raising the parties' children. The court further noted that Kristine was not entitled to any government disability as a result of her unemployment during the

marriage. The court found that if Kristine obtained full-time employment, the award would require modification. However, a part-time employment was more likely, but would not raise Kristine's standard of living sufficiently to warrant a reduction in the maintenance amount. Michael appeals.

¶ 14 ANALYSIS

¶ 15 I. Permanent Maintenance Award

¶ 16 A. Motion to Dismiss the Appeal

¶ 17 Michael argues that the trial court erred in changing the maintenance award from rehabilitative to permanent. Kristine responds that this court does not have jurisdiction to address the issue because the maintenance was changed from rehabilitative in January 2009 and Michael did not timely appeal that order. See Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

¶ 18 Rehabilitative maintenance is temporary and is designed to enable the former spouse to develop the skill necessary to support herself. *In re Marriage of Ward*, 267 Ill. App. 3d 35 (1994). Permanent maintenance is an award for an indefinite term and is appropriate where the recipient spouse is unemployable or is employable only at an income considerably lower than the standard of living established during the marriage. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816 (1994).

¶ 19 Here, the trial court's initial maintenance award was designated as "rehabilitative maintenance." However, in subsequent maintenance extension orders, the court referred to the award generically as maintenance. In contrast to the unclear classification of the early maintenance orders, the court directly ordered Michael on May 30, 2013, to pay $3,000 per month in permanent maintenance. Michael filed a timely notice of appeal from this order and challenges this maintenance modification on appeal. See Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

As a result, we have jurisdiction to review this issue, and we deny Kristine's motion to dismiss the appeal.

¶ 20 B. Review of the Maintenance Award

¶ 21 Michael argues that the trial court abused its discretion in awarding Kristine permanent maintenance because the court ignored Kristine's failure to demonstrate her good faith efforts to become self-sufficient and ignored the contradiction between her demonstrated ability to do unpaid work for her attorney while asserting that she was unable to work. Michael also states that the record established that Kristine did not have recurrent Cushing's disease.

¶ 22 A trial court's decision regarding an award of maintenance will not be disturbed absent a clear abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21 (2009). A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *Id*.

¶ 23 A court may grant temporary or permanent maintenance for either spouse in amounts and for periods of time as the court deems necessary after considering the relevant factors. 750 ILCS 5/504(a) (West 2004); see also *In re Marriage of Rodriguez*, 359 Ill. App. 3d 307 (2005) (court has the power to award time-limited maintenance with a provision for review); *In re Marriage of Hucker*, 259 Ill. App. 3d 551 (1994) (end date in an order awarding maintenance may be a review date rather than a termination date). Factors supporting an award of maintenance include: (1) the income and property of each party; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of present and future earning capacity of the party seeking maintenance resulting from time devoted to domestic duties or forgone or delayed education or career opportunities due to the marriage; (5) the time necessary to enable the party seeking maintenance to acquire the appropriate education, training, and employment, and

whether that party is able to support 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, physical, and emotional condition of both parties; (9) the tax consequences of the property division; (10) the contributions and services by the party seeking maintenance to the education, training, career 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 2004). An award of permanent maintenance is necessary where a spouse is not employable or is employable only at a low income as compared to her previous standard of living. *In re Marriage of Selinger*, 351 Ill. App. 3d 611 (2004). In contrast, rehabilitative maintenance is appropriate only where the spouse is employable at an income which would provide approximately the standard of living enjoyed during the marriage. *In re Marriage of Albiani*, 159 Ill. App. 3d 519 (1987).

¶ 24 We find *In re Marriage of Drury*, 317 Ill. App. 3d 201 (2000), to be instructive of the factors warranting an award of permanent maintenance. In *Drury*, the court remanded the case to the trial court with direction to reinstate a $600 per month maintenance award as permanent maintenance. In support of the remand, the court noted that: (1) there was a significant disparity in the present and future earning capacities of the parties; (2) the former husband had the opportunity to continue and advance his career during the marriage because of the former wife's contributions to the family; (3) the former wife was not able to enjoy a standard of living similar to the one she enjoyed during the marriage; (4) the former wife would have been forced to sell her limited assets to meet her needs; (5) the former husband was able to contribute to his former wife's needs while still meeting his own; and (6) the 29-year marriage was of significant duration. *Id*.

¶ 25 Here, the court's conversion of the earlier maintenance award to permanent maintenance was supported by Kristine's inability to maintain a standard of living similar to that which she experienced during the marriage. We initially note, contrary to Michael's argument, that a physician's letter in the record stated that Kristine had recurrent Cushing's disease. Kristine testified that as a result of the Cushing's disease diagnosis and other health problems, she was unable to work full-time. Since the dissolution, Kristine tried to balance her medical issues while searching for employment, but was unable to find a part-time paid position. Even if Kristine had found part-time employment or employment compatible with her medical condition, she would likely still have experienced a lower standard of living than what she experienced during the marriage. During the marriage, Kristine lived comfortably in a 3,000 square feet home in an upper-middle class environment. To return to a similar standard of living Kristine would need to obtain full-time employment in a high-paying field. Because Kristine was predominantly unemployed during the marriage and has had to cope with a series of medical ailments, it is unlikely that she could quickly obtain such employment.

¶ 26 Michael disputes Kristine's reported inability to work, noting that she accepted an unpaid position working part-time for her attorney. Michael's arguments discount Kristine's testimony that she accepted the position to determine how much work she could tolerate given her medical condition. Although Kristine's decision not to continue to seek a paid position while working for her attorney raises questions about the sincerity of her job search, Kristine's explanation for accepting the position is reasonable in the short term. We note that the court's award of permanent maintenance, however, does not excuse Kristine's obligation to make a good-faith effort toward finding future paid employment. See *Marriage of Dunseth*, 260 Ill. App. 3d 816 (spouse awarded indefinite maintenance has a good faith obligation to work toward becoming

self-sufficient). Nonetheless, we hold that an award of permanent maintenance was necessary in this case because Kristine was only employable at an income that would provide her with a standard of living below that which she experienced during the marriage.

¶ 27 II. Permanent Disability Finding

¶ 28 Michael argues that the trial court abused its discretion in finding that Kristine was permanently disabled. Michael contends that Kristine has never been deemed disabled by the Social Security Administration, and she failed to produce any evidence indicating that she was unable to work.

¶ 29 We agree with Michael's observation that Kristine was not deemed disabled by the Social Security Administration and she has exhibited an ability to work part-time. Nonetheless, we do not find in the May 30, 2013, order that the court determined that Kristine was disabled. In contrast, the order noted that Kristine searched "diligently for part-time work that will fit her medical conditions," and the court did not rule out the possibility that Kristine might obtain employment that would require modification of the maintenance award. Consequently, the trial court did not expressly or impliedly find that Kristine was disabled or incapable of working.

¶ 30 III. Maintenance Award

¶ 31 Michael argues that the maintenance award was unreasonable considering that since the dissolution, Kristine had assumed new expenses. Michael also argues that Kristine abdicated her duty to undertake reasonable efforts to make herself self-sufficient and therefore the trial court's award was an abuse of discretion. See *In re Marriage of Courtright*, 229 Ill. App. 3d 1089 (1992).

¶ 32 As noted in the first issue, a maintenance award is within the sound discretion of the trial court, and a "trial court's decision regarding the amount of a maintenance award will not be

overturned unless no reasonable person would take the view adopted by the court." *In re Marriage of Marthens*, 215 Ill. App. 3d 590, 595 (1991).

¶ 33 Michael argues that the court's maintenance award was unreasonable given that Kristine assumed new expenses for a cellular telephone bill and health club membership, and she purchased a new vehicle. However, after reviewing Kristine's income and expenses affidavit and the testimony from the hearing, we conclude that the trial court's maintenance award was reasonable. At the hearing, Kristine explained that her cellular telephone bill had increased because she used her telephone to search for employment and shared the plan with the parties' son. Kristine purchased the health club membership as a means to entertain the parties' children while they were in her care. Although there was little evidence regarding Kristine's need for a new car, use of a vehicle was reasonably necessary to facilitate Kristine's job search, medical treatment, and child care responsibilities. Finally, we note that even with the increased maintenance payments, Kristine's standard of living was not near what she experienced while she was married to Michael. Therefore, the trial court's award of $3,000 per month in maintenance was reasonable and not an abuse of discretion.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 36 Affirmed.