

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).

2014 IL App (3d) 130648-U

Order filed October 30, 2014

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF TODD A. COURTOIS,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
)	Hancock County, Illinois,
Petitioner-Appellant,)	
)	Appeal No. 3-13-0648
and)	Circuit No. 12-D-10
)	
JULIE M. COURTOIS,)	Honorable
)	David L. Vancil,
Respondent-Appellee.)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* In a dissolution of marriage proceeding, the trial court did not abuse its discretion in awarding maintenance to the wife after it considered the relevant statutory factors, including the parties' disparity in income, future earning capacity, and post-separation standard of living. Also, the trial court did not abuse its discretion in ordering the husband to pay a portion of the wife's attorney's fees because the trial court determined that the wife had a limited ability to pay and the husband was in a position to assist her in attorney's fees.

¶ 2 In a marriage dissolution action, the trial court awarded the wife maintenance and attorney's fees, and the husband appealed.

FACTS

¶ 3

¶ 4

The petitioner husband, Todd Courtois, and the respondent wife, Julie Courtois, were married on September 5, 1987, in Carthage, Illinois. Two children were born during the marriage, but both were adults by the time the petition for dissolution of marriage was filed on February 17, 2012. The parties entered a marital settlement agreement, which was approved by the trial court, resolving all property division issues. A hearing was held on the two remaining issues: maintenance and attorney's fees.

¶ 5

At the hearing, the husband testified that he was 49 years old. He had a bachelor's degree, and had been employed by Van Meter Incorporated as a salesman for 10 ½ years. He had a base salary of approximately \$20,000 per year, plus commissions. His W-2s indicated earnings of \$85,271.89 in 2012 and \$90,046.80 in 2011, but the husband testified that sales were down in 2013 by approximately 18%. Since his separation from the wife, he had purchased a 2012 truck to replace his older vehicle. He also took a vacation to Mexico with his girlfriend. He also testified that he had money to spend on gifts and dinners out at restaurants.

¶ 6

The wife testified that the marital settlement agreement split the parties' assets and liabilities equally, including the proceeds from the marital home, which had to be sold. She was employed full-time as a teacher at an elementary school. Her W-2s indicated earnings of \$35,128 in 2012 and \$33,295 in 2011, and she expected to make about the same amount in 2013. She testified that the parties had lived frugally during the marriage. Since her separation from the husband, she had to cut her spending, so she no longer had a home phone, cable, or internet. Her car was eight years old, with high miles. She testified that she had been diagnosed with breast cancer four years earlier, and she was in remission, but she continued to see her oncologist quarterly. She was also

being treated for a thyroid condition, and took medication for that condition. In addition, she was being treated for depression, primarily since the husband filed for divorce, including taking an anti-depressant and seeing a counselor once a week. She was seeking maintenance.

¶ 7 The wife was also seeking attorney's fees from the husband. According to her testimony, and the exhibits, the wife incurred over \$15,000 in attorney's fees. She had already paid the majority of the fees, with the help of a \$5,500 loan from her father, and had an outstanding balance of \$2,695. There was no written loan agreement with her father, and the loan was not listed on her financial affidavit.

¶ 8 The trial court issued a letter ruling granting maintenance and attorney's fees. The trial court considered the relevant statutory factors, and due to the disparity in income, future earning capacity, and post-separation standard of living, it awarded the wife \$800 a month in maintenance until the wife was Medicare-eligible. The trial court also determined that the wife had a limited ability to pay her attorney's fees and that the husband was in a position to assist her in attorney's fees. The trial court ordered the husband to pay \$2,500 toward the wife's attorney's fees. The husband appealed.

¶ 9 ANALYSIS

¶ 10 The husband argues that the trial court abused its discretion in awarding maintenance to the wife. Maintenance awards are governed by section 504 of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/504 (West 2010). In awarding maintenance, a trial court should consider a number of factors, including, *inter alia*, the income and property of each party, the needs of each party, the parties' respective earning capacities, any impairments, the standard of living the parties enjoyed during their marriage, and the duration of the marriage. 750 ILCS 5/504(a) (West 2010).

The trial court is not limited to considering the enumerated factors, and, when determining maintenance, no single factor is determinative. *In re Marriage of Heroy*, 385 Ill. App. 3d 640 (2008). The propriety, amount, and duration of a maintenance award are within the discretion of the trial court, and we will not reverse unless we find an abuse of that discretion. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388 (2008).

¶ 11 Maintenance is generally awarded in an amount necessary to meet the recipient's reasonable needs in accordance with the standard of living that the parties enjoyed during their marriage. *In re Marriage of Nord*, 402 Ill. App. 3d 288 (2010). The trial court considered the statutory factors, particularly the disparity in income, future earning capacity, and post-separation standard of living, and awarded maintenance to the wife in the amount of \$800 a month until she was eligible for Medicare. It found that the parties had been married for approximately 26 years. Both parties were employed, with the husband's 2012 income of \$85,271.89 and the wife's 2012 income of \$34,128. The husband was a salesman and the wife was a teacher; she would be seeking additional summer employment, which she had never done in the past. The marital home was to be sold, and the proceeds would be split equally. The trial court also considered the wife's health concerns, breast cancer (in remission), a thyroid condition, and depression, and her increased health insurance costs now that she had to obtain her own policy. The trial court found that, since the parties' separation, the husband had increased his standard of living, while the wife's had decreased. Evidence of that was that the husband took a vacation to Mexico with his girlfriend, bought a new truck, and could buy gifts and dinners out at restaurants. The wife had to cut a number of expenses, and was driving an older car with high miles.

¶ 12 The husband argues that the wife obtained more than half of the marital assets, so no award of maintenance was necessary. The marital settlement agreement appears to divide the parties' assets equally; the husband argues that the wife's social security employment retirement (\$81,500) was not included, so she received assets of \$92,065.80 in her favor. The wife points out that the husband's social security was also not included. He also argues that his wife's earning capacity would only increase, primarily because she was going to seek summer employment. However, the trial court specifically considered those factors, and we find no abuse of discretion.

¶ 13 In general, maintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708 (2006). Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living. *Id.* In this case, although the approximately 20 years until the wife became Medicare-eligible was a significant amount of time, the parties had been married for more than that, so we find that the length of the term of the maintenance was not an abuse of discretion.¹

¶ 14 The husband argues that the trial court abused its discretion in ordering him to pay \$2,500 of the wife's attorney's fees. He argues that the fact that she had already paid almost \$14,000 to her attorney belied the allegation that she had no money and could not

¹ The 2014 amendment to section 504 of the Act provides a formula for determining the amount and duration of maintenance. Pub. Act 98-961 (eff. Jan. 1, 2015) (amending 750 ILCS 5/504 (West 2012)). The formula for determining duration provides a percentage for marriages under 20 years, but for marriages over 20 years, permanent maintenance or maintenance equal to the term of the marriage may be appropriate. 750 ILCS 5/504(b-1)(1)(B) (eff. Jan. 1, 2015). While the formula is not applicable to this case, it lends support to the finding that the trial court did not abuse its discretion.

afford the fees. The wife argues that the trial court properly considered the financial resources of the parties, and its award was not an abuse of discretion.

¶ 15 As a general rule, each party is responsible for his or her own attorney fees. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. However, section 508(a) of the Act allows for an award of attorney's fees. 750 ILCS 5/508(a) (West 2010). The party seeking an award of attorney's fees must establish her inability to pay and the other spouse's ability to do so. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability. *Id.* When determining an award of attorney fees, the allocation of assets and liabilities, maintenance and the relative earning abilities of the parties should be considered. *In re Marriage of Suriano*, 324 Ill.App.3d 839, 852 (2001). We review a trial court's decision to award or deny fees for abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005).

¶ 16 The trial court stated that it had reviewed the parties' circumstances and found that the wife had a limited ability to pay her attorney's fees and the husband was in a position to assist her. The evidence at the hearing established that the wife had a balance of almost \$2,700 owed to her attorney. The wife testified that she had paid the remainder of the bill with loans from her father (totaling \$5,500), which she intended to repay, and payments of \$200 a month. We find that the trial court's order that the husband pay most of the remaining balance, \$2,500, was not an abuse of discretion.

¶ 17 CONCLUSION

¶ 18 The judgment of the circuit court of Hancock County is affirmed.

¶ 19 Affirmed.