

NOTICE

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2014 IL App (4th) 130284-U

NO. 4-13-0284

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 26, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
SHERRILL DUNAHEE,)	Circuit Court of
Plaintiff-Appellant,)	Ford County
and)	No. 11D42
DARRELL DUNAHEE,)	
Defendant-Appellee.)	Honorable
)	Stephen R. Pacey,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court (1) did not abuse its discretion in the distribution of property, (2) abused its discretion in the allocation of college expenses, and (3) abused its discretion in the award of maintenance. The appellate court remanded for further proceedings.

¶ 2 In June 2011, petitioner, Sherrill Dunahee, filed a petition to dissolve her marriage with respondent, Darrell Dunahee. In August 2012, the trial court issued the dissolution of marriage and its order on issues pertaining to property distribution, college expenses, and maintenance.

¶ 3 On appeal, Sherrill argues the trial court erred in (1) dividing the marital property, (2) ordering her to pay one-third of her daughter's college expenses, and (3) setting the award of rehabilitative maintenance. We affirm in part, reverse in part, and remand for further

proceedings.

¶ 4

I. BACKGROUND

¶ 5 Sherrill, born in 1954, and Darrell, born in 1953, were married in February 1984. Two children were born during the marriage: Kevin, born in 1987, and Kayla, born in 1991.

¶ 6 In June 2011, Sherrill filed a petition for dissolution of marriage. In May 2012, the trial court conducted a hearing on the division of property and Sherrill's request for maintenance. Sherrill testified she was 58 years old and the parties had been married for 28 years. At the time of the marriage, Sherrill worked as a payroll clerk at a construction company. Once the parties married, they jointly decided Sherrill should quit her job and stay home. Sherrill was not employed outside the home except for running a gift shop in 2010 that made a "low profit."

¶ 7 While a homemaker during the marriage, Sherrill stated she also engaged in the farming operations by hauling grain to the elevator, bringing food to the hired help, and handling the farm books. She testified she was under contract to purchase a home in Plainview, Illinois, for \$215,000. She was unemployed, stating she wanted to wait until she got settled to see what employment opportunities were available. She hoped to get involved in "home staging." She sought maintenance of \$2,325 per month. The testimony indicated Sherrill had paid for one semester of Kayla's college expenses and Darrell had paid for three. Sherrill asked that Darrell be required to pay Kayla's future educational expenses. Since the parties separated in May 2011, Sherrill had received approximately \$69,000 in cash advances from the parties' assets.

¶ 8 During the marriage, the parties acquired a homestead, and joint exhibit No. 1 listed its value at \$379,360. Sherrill stated the homestead includes a farmhouse, sheds, grain

bins, and a large machine shop. In 1988, the parties acquired 40 acres, known as Dunahee West, which now consists of 80 acres. Joint exhibit No. 1 listed its value at \$613,360. Later, the parties acquired another 80 acres, known as Dunahee South, and joint exhibit No. 1 listed its value at \$611,600. In 2006, Darrell, along with his brother, inherited an additional undivided one-half interest in approximately 240 acres of farmland. He also inherited approximately \$263,698 from his parents.

¶ 9 The parties lived a modest lifestyle during the marriage. They took some vacations, which mainly consisted of two or three days of camping. They typically ate their meals at home and shopped at JC Penney, Walmart, and Kmart.

¶ 10 Darrell testified he was 58 years old. At the time of the marriage, Darrell, who had done custom farming with his father and also worked as a commercial pilot, was employed as a full-time farmer. He also had a side job as a seed dealer. On his 2011 income tax return, Darrell showed an adjusted gross income of \$189,848. For 2010, the amount was \$111,968, in 2009 the amount was \$108,581, and in 2008 the amount was \$55,025. He stated some of the income would be used to purchase newer machinery or prepay expenses. Darrell did not use an operating loan to fund the farming operations but typically prepaid the upcoming year's expenses from the previous year's crop income. He had no objection to Sherrill receiving Dunahee South, subject to a mortgage credit in favor of Darrell. He sought a five-year lease on Dunahee South with a cost of \$250 per acre.

¶ 11 In July 2012, the trial court issued its findings. Among other things, the court found Sherrill was to receive Dunahee South (clear of the mortgage), her marital individual retirement account (IRA), half the value of the marital homestead, half the value of the marital

farm equipment, her vehicle, and half the value of the remaining marital stock and investments. Darrell was to receive Dunahee West, his marital IRA, the marital homestead, the marital farm equipment, his vehicle, and half the value of the remaining marital stock and investments. The court noted the testimony at the hearing suggested Darrell would pay Kayla's college expenses.

¶ 12 In August 2012, the trial court issued the judgment for dissolution of marriage. The court awarded Sherrill the 80-acre farm parcel known as Dunahee South subject to a cash lease in which Darrell had the right to lease the farm parcel for a period of five years at a cash rent of \$250 per acre per year. The court awarded Darrell the homestead, the 80-acre farm parcel known as Dunahee West, and his undivided one-half interest in the farm parcels known as Dunahee North and Dunahee East. The court awarded Sherrill the following marital property:

Dunahee South	\$611,600
IRA	\$ 22,649
Country Financial Investments	\$ 44,903
Pekin life insurance policy	\$ 22,504
UTG stock	\$ 3,107
Edward Jones SEP	\$ 18,908
Vehicle	\$ 17,500
Less reimbursement to nonmarital contribution	(\$42,379)
Cash from Darrell	\$225,000
<u>Cash advanced</u>	<u>\$ 49,878</u>
Total	\$993,970.

The court awarded Darrell the following marital property:

Dunahee West	\$ 613,360
Homestead	\$ 379,360
Vehicle	\$ 4,000
Farm equipment	\$ 289,000
IRA	\$ 22,649
Interest in Boehle Consulting	\$ 3,662
Grain in storage	\$ 115,200
Less mortgage	(\$234,419)
Less reimbursement	(\$42,379)
<u>Payment to Sherrill</u>	<u>(\$225,000)</u>

Total \$ 926,333.

¶ 13 The trial court also ordered Darrell to pay rehabilitative maintenance of \$500 per month from August 2012 through the end of July 2016. The court ordered each of the parties to pay one-third of the net costs of Kayla's college expenses.

¶ 14 In September 2012, Sherrill filed a motion to reconsider, arguing the trial court erred in, *inter alia*, setting maintenance too low and for too short a time period, dividing marital assets, and forcing her to pay for Kayla's education. In March 2013, the court denied the motion. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Property Division

¶ 17 Sherrill argues the trial court erred in the division of property because it failed to give her a larger distribution based on the fact that Darrell possessed inherited land valued at close to \$1.2 million. We disagree.

¶ 18 Section 503(d) of the Dissolution Act requires the trial court to divide marital property "in just proportions" considering the enumerated and relevant factors. 750 ILCS 5/503(d) (West 2012). Such factors include, in part, the value of the property assigned to each spouse, the duration of the marriage, the age, health, occupation, sources of income, employability, and needs of each of the parties, and the reasonable opportunity for each spouse for future acquisition of capital assets and future income. 750 ILCS 5/503(d) (West 2012).

¶ 19 In dividing marital property, the distribution by the trial court need not be equal so long as it is equitable. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649, 616 N.E.2d 1379, 1388 (1993). The division of marital property will not be reversed on appeal absent an

abuse of discretion. *In re Marriage of Drury*, 317 Ill. App. 3d 201, 210-11, 740 N.E.2d 365, 371 (2000). In that regard, the court's distribution of assets will only be disturbed on appeal if no reasonable person would agree with the trial court's decision. *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 898, 715 N.E.2d 1201, 1203 (1999).

¶ 20 Sherrill argues the trial court erred in the property distribution by failing to take into account her contributions as a homemaker and because Darrell's property "makes him more than ONE MILLION dollars richer than Sherrill." She asks this court to divide the marital assets on a 65% to 35% basis in her favor.

¶ 21 Here, the trial court noted that due to Sherrill receiving primarily cash and Darrell receiving real estate, machinery, existing debt, and having to incur additional debt, Sherrill's share of the marital property should not be significantly greater than Darrell's share. Sherrill offers only generalities and contends the distribution percentages should be adjusted. She also claims the court made other errors affecting the property settlement but fails to develop her arguments. Without more, we find Sherrill failed to show the court abused its discretion in the distribution of property.

¶ 22 B. College Expenses

¶ 23 Sherrill argues the trial court erred in ordering her to pay one-third of Kayla's college expenses. We agree.

¶ 24 Section 513(a)(2) of the Dissolution Act allows a trial court to order the parties to pay the college expenses for a child. When making the decision, the court is to consider all relevant factors, including the financial resources of the parents, the standard of living the child would have enjoyed had the marriage not dissolved, the child's financial resources, and the

child's academic performance. 750 ILCS 5/513(b) (West 2012). A court's decision to order the parties to contribute to a child's "educational expenses will not be reversed absent an abuse of discretion." *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834, 715 N.E.2d 814, 818 (1999). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36, 919 N.E.2d 333, 342 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 25 Sherrill argues she should not have to contribute to Kayla's college expenses because she is unemployed and her only income was the \$500-per-month maintenance and the cash rent from Darrell. We point out that in its order, the trial court found the testimony suggested an agreement that Darrell would pay for Kayla's educational expenses. Sherrill claims Darrell testified he fully intended to pay for Kayla's education in its entirety. While a review of the hearing transcript shows Darrell did not so testify, his counsel at oral argument clarified Darrell's position at trial was to assume that obligation in exchange for a limited maintenance award, or none at all. In light of the foregoing, we find the trial court should not have required Sherrill's contribution to Kayla's college expenses, and on remand, the court shall order Darrell to be responsible for two-thirds of Kayla's college expenses.

¶ 26 C. Maintenance

¶ 27 Sherrill argues the trial court's award of rehabilitative maintenance for \$500 per month from August 2012 through the end of July 2016 constituted an abuse of discretion because it was too low and too short. We find the trial court abused its discretion in setting maintenance.

¶ 28 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act

(Dissolution Act) (750 ILCS 5/504(a) (West 2012)) sets forth 12 factors for the trial court to consider in deciding whether to grant maintenance, including the following:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or 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 and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, 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."

"The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of the standard of living established during the marriage." *In re Marriage of Culp*, 341 Ill. App. 3d 390, 398, 792 N.E.2d 452, 459 (2003).

¶ 29 "As a general rule, '[m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living.'" *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652, 895 N.E.2d 1025, 1038 (2008) (quoting *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708, 850 N.E.2d 880, 886 (2006)). A permanent maintenance award is "appropriate in circumstances where a spouse has devoted significant time to raising a family in lieu of pursuing a career." *Heroy*, 385 Ill. App. 3d at 652, 895 N.E.2d at 1039.

¶ 30 The trial court has the discretion to determine the amount and duration of an award of maintenance. *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1062, 838 N.E.2d 310, 314 (2005). The court's decision in awarding maintenance will not be reversed on appeal

absent an abuse of discretion. *Donovan*, 361 Ill. App. 3d at 1062, 838 N.E.2d at 314. "Where an abuse of discretion in awarding or denying maintenance is claimed, the burden of showing such an abuse rests with the claiming party." *In re Marriage of Homann*, 276 Ill. App. 3d 236, 240, 658 N.E.2d 492, 495 (1995).

¶ 31 In the case *sub judice*, the trial court awarded Sherrill maintenance of \$500 per month for 48 months, at which time she will be 62 years old. We note the 28-year marriage was of significant duration. Further, Sherrill contributed to the marriage by working as a homemaker and also worked to help Darrell succeed in the farming enterprise. She has no degree, is unemployed, and without skills at age 58 to support herself in a manner consistent with the marriage. On the other hand, Darrell has been a successful farmer and also has a side job as a seed dealer. Based on the parties' income during the last three years of marriage, Sherrill's needs and future earning capacity, the standard of living during the 28-year marriage, and her age, we find no basis in the record for the maintenance to be set this low for this short a duration. In reversing the trial court's maintenance award, we find the award should be permanent. However, we will leave it to the trial court on remand to determine the appropriate monthly amount based on the above facts and the factors set forth in section 504(a) of the Dissolution Act.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm in part, reverse in part, and remand with directions.

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