

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 (4th) 140207-U

NO. 4-14-0207

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 4, 2014

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF)	Appeal from
AMANDA LOGSDON,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
and)	No. 10D771
MICHAEL LOGSDON,)	
Respondent-Appellant.)	Honorable
)	Matthew Maurer,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* After dissolving the parties' marriage, the trial court disposed of the remaining ancillary issues. The appellate court affirmed the trial court's judgment, rejecting the respondent's arguments that the court abused its discretion by (1) awarding maintenance in gross to the petitioner and (2) requiring respondent to reimburse the marital estate.

¶ 2 In January 2014, the trial court (1) dissolved the marriage of petitioner, Amanda Logsdon, and respondent, Michael Logsdon; and (2) disposed of the parties' remaining ancillary issues. The court's corresponding order required Michael to pay Amanda maintenance in gross in the amount of \$755 per month for 10 years and reimburse the marital estate for payments made to satisfy certain premarital debts Michael had incurred.

¶ 3 Michael appeals, arguing that the trial court abused its discretion by awarding Amanda maintenance in gross and requiring him to reimburse the marital estate. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

A. The Parties' Dissolution of Marriage

¶ 6 In February 2006, Michael and Amanda married. In September 2010, Amanda left the home she shared with Michael and filed a petition for dissolution of marriage. Michael had a 15-year-old daughter from a previous marriage, but the parties did not have any children during their union.

¶ 7

At a November 2013 hearing on Amanda's dissolution petition, the parties agreed that they would retain their respective employment pensions. Thereafter, the trial court dissolved the parties' marriage, finding that irreconcilable differences had caused an irretrievable breakdown of the marriage.

¶ 8

B. The Pertinent Evidence Regarding Ancillary Issues

¶ 9

Immediately after the trial court dissolved the parties' marriage, Amanda and Michael presented evidence regarding ancillary issues, which we summarize in accordance with the issues raised in this appeal.

¶ 10

1. *Amanda's Testimony*

¶ 11

Amanda, who was 33 years old at the time of the hearing, testified that upon her February 2006 marriage to Michael, she worked as a (1) full-time library specialist at Lincoln Land Community College and (2) part-time bartender. Amanda deposited her earnings into a joint bank account from which the parties paid their financial obligations and expenses. Amanda estimated that she paid \$1,400 toward the premarital educational loans she used to fund her bachelor's degree. Amanda eventually left her bartending job but kept her full-time job at the library while earning a master's degree in library and information science. Amanda surmised that the additional education would permit her to take advantage of any promotional opportuni-

ties that had yet to arise. In 2013, Amanda made approximately \$39,000 as a library specialist.

¶ 12 Amanda applied for student loans to fund her postgraduate education, intending to borrow only enough money to pay her tuition, books, and supplies. Before disbursement of the loan, Amanda discovered that she was also eligible to receive student loan monies for living expenses. Amanda told Michael that she believed they were "doing fine without the extra money," but she accepted the living-expenses disbursement because Michael (1) "made the financial decisions" and (2) stated "that [they] could use the money to pay off bills." Amanda explained that Michael would get upset and disparage her character if she did not agree with his financial decisions. From February 2008 to May 2010, Amanda received 11 disbursements of varying amounts for living expenses.

¶ 13 Amanda periodically deposited the living-expenses proceeds—approximately \$40,246 in total—into the parties' joint bank account, which was then used to satisfy household expenses. Such expenses included (1) the monthly mortgage on Michael's premarital residence; (2) real estate taxes, insurance, and residential maintenance costs; (3) monthly payments to satisfy the premarital loan on Michaels' boat, which included slip fees; (4) dental and medical expenses for Michael's daughter; (5) a \$2,000 payment to satisfy a premarital obligation to Michael's father; and (6) attorney fees associated with Michael's previous marriage.

¶ 14 As of September 2013, Amanda owed \$85,437 in postgraduate loans, which included \$53,739 specifically allocated for living expenses. (These amounts included accrued interest.) Amanda explained that she placed each of her postgraduate educational loans in a forbearance status until December 2013 because she was financially unable to make the required loan payments, and the impending divorce created uncertainty. Amanda projected that her total postgraduate debt would result in a monthly payment of approximately \$1,041 over 10 years.

¶ 15

2. Michael's Testimony

¶ 16 Michael, who was 42 years old, testified that he was a fire investigator with the City of Springfield fire department. (The record shows that Michael earned approximately \$90,000 annually as a firefighter.) Prior to his marriage to Amanda, Michael had the following assets and liabilities: (1) first and second mortgages in excess of \$88,000 secured by a single-family home; (2) a \$35,054 loan for a motor boat; (3) a \$28,000 loan for a truck; (4) \$6,400 in credit card debt; (5) a \$20,966 loan from the Springfield Firefighters Credit Union; and (6) a \$2,000 obligation to his father. In addition, sometime prior to their marriage, Michael and Amanda applied for and received money from the following two joint loans approved by the Sangamon School Credit Union: (1) \$3,008 to purchase Amanda's wedding ring and (2) \$9,511 to purchase a car for Amanda. Michael explained that Amanda had to be a cosigner on the aforementioned joint loans before the credit union would allow him to borrow funds.

¶ 17 In January 2007—11 months after his marriage to Amanda—Michael refinanced his premarital home, consolidating the following debts into a new mortgage: (1) the two premarital mortgages (\$87,934); (2) the premarital truck loan (\$28,211); (3) the premarital credit card debt (\$7,036); and (4) the remaining balance on the joint loan used to purchase Amanda's wedding ring (\$1,724). In May 2009—following the financial collapse of his lending institution—Michael again refinanced his premarital home, which increased the debt owed to \$133,104. (No additional debts were consolidated into the May 2009 refinance.) In September 2010, the month Amanda moved out of Michael's home and filed her dissolution petition, Michael estimated the outstanding mortgage on his premarital home was \$131,000.

¶ 18 In March 2006, Michael applied for and received a \$9,000 loan from the Springfield Firefighters Credit Union to replace the siding and windows on his premarital residence. In

April 2007, Michael used the equity in his premarital truck, which was financially unencumbered as a result of the January 2007 refinance, to borrow an additional \$21,000 to purchase two new motors for his boat, which cost \$16,258. In August 2010—approximately one week before Amanda left the residence—Michael, who already owed \$24,000 to the Springfield Firefighters Credit Union, borrowed an additional \$11,000 from that financial institution to fund his living expenses following Amanda's departure.

¶ 19 Michael explained that after Amanda moved out in September 2010, she stopped operating the car that the parties bought shortly before their marriage and left that vehicle in Michael's possession. Sometime in September 2013—two months before the instant hearing—Michael traded in that car for \$1,500 and bought a sport utility vehicle, which he financed with a \$12,700 loan from another credit union. Michael admitted that at the time of the hearing, he had paid off his boat loan, which had a \$35,054 balance when he married Amanda. Michael disputed Amanda's account of their discussion concerning additional educational loan funding for living expenses, asserting that he suggested only that Amanda should consider whether she required the extra money for other educational incidentals.

¶ 20 *3. The Trial Court's Written Judgment*

¶ 21 In December 2013, the trial court entered a memorandum of opinion, finding, in pertinent part, as follows: (1) Amanda's testimony regarding the postgraduate loans for living expenses was credible; (2) Amanda's postgraduate student loans were marital debts; (3) Amanda's decision to place her postgraduate student loans in forbearance was reasonable given the circumstances; (4) clear and convincing evidence existed showing substantial sums of money were paid from the marital estate for the sole benefit of reducing Michael's premarital debt; (5) Amanda was requesting reimbursement for a portion of the marital estate used to satisfy

Michael's premarital financial obligations; (6) the marital estate was entitled to reimbursement from Michael in the amount of \$35,054 for his premarital boat and \$2,000 for his premarital debt to his father; and (7) the marital funds used to pay down approximately \$2,100 of Amanda's premarital undergraduate school loan debt was "*de minimis*" compared to Michael's reimbursement to the marital estate.

¶ 22 In determining the adequate division of debt, the court stated, as follows:

"The court has considered all of the *** factors [outlined in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/503(d) (West 2012))] in dividing the marital estate; however the court believes certain factors are more significant in this cause of action based on the circumstances of the parties; specifically, the value of the property assigned to each spouse, the relative economic circumstances of each spouse, the reasonable opportunity of each spouse for future acquisition of capital assets and income, their separate assets and debts, their employment and earning ability, and the needs of each of the parties. It is without question that [Michael] has a greater income than [Amanda]; earning more than twice her income. [Michael] is in a better position to bear the burden of the marital debt. The court, in taking into consideration the marital assets, debts, and other factors mentioned herein assigns [Michael] 72.56% and [Amanda] 27.44% of the student-loan debt. The court is of the opinion that this division will achieve an equitable distribution of the marital property

and marital debt while taking into consideration the contributions the marital estate made to [Michael's] premarital financial obligations for which he received the sole benefit of."

To ensure payment of Michael's portion of Amanda's educational loan debt, which was in her name only, the court awarded Amanda maintenance in gross in the amount of \$755 per month for 10 years beginning on January 15, 2014. (The court calculated the \$755 monthly obligation by multiplying Amanda's monthly postgraduate loan repayment of \$1,041 by 72.56%.) In so doing, the court stated that it had considered all 12 factors outlined in section 504(a) of the Marriage Act (750 ILCS 5/504(a) (West 2012)), which permits a court to grant an award of maintenance in gross under certain circumstances. The court then directed Amanda's counsel to prepare an order consistent with the terms and conditions of the court's memorandum of opinion.

¶ 23 In January 2014, the trial court entered a judgment (1) dissolving the parties' marriage and (2) disposing of the ancillary issues, as previously noted.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 In his brief to this court, Michael raises three separate arguments, all of which challenge the trial court's award of maintenance in gross. Specifically, Michael claims that (1) the amount and duration of the maintenance in gross was an abuse of the court's discretion, (2) the court failed to consider that his nonmarital estate adequately reimbursed the parties' marital estate, and (3) the circumstances presented did not justify the court's award of maintenance in gross. Prior to reaching the merits of Michael's claims, we first explain maintenance in gross and our standard of review.

¶ 27 A. Maintenance in Gross and the Standard of Review

¶ 28 Maintenance in gross is defined as "a nonmodifiable sum certain to be received by the former spouse regardless of changes in circumstances." *In re Marriage of Freeman*, 106 Ill. 2d 290, 298, 478 N.E.2d 326, 329 (1985). An award of maintenance in gross creates a vested interest in the recipient that does not terminate automatically on the remarriage of the receiving party. *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 712, 834 N.E.2d 539, 544 (2005).

¶ 29 Section 504(a) of the Marriage Act permits a trial court to grant maintenance in gross, provided the court has considered the 12 enumerated factors contained therein. 750 ILCS 5/504(a) (West 2012). A trial court's decision to grant maintenance must be predicated on a reasonable balancing of the aforementioned factors. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 84, 993 N.E.2d 1062. Although periodic maintenance is the judicially preferred form of award, section 504(a) of the Marriage Act " 'authorize[s] the trial judge to award maintenance in gross if [the court] finds it to be appropriate in a particular case.' " *Id.* ¶ 85, 993 N.E.2d 1062 (quoting *Freeman*, 106 Ill. 2d at 298, 478 N.E.2d at 329).

¶ 30 "A trial court's determination as to an award of maintenance will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10, 967 N.E.2d 358. "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005).

¶ 31 B. The Propriety of the Trial Court's Judgment

¶ 32 We note that in disposing of the parties' ancillary issues, the trial court entered an extensive and thoughtful memorandum of opinion, which succinctly outlined (1) the evidence presented at the November 2013 hearing on Amanda's petition for dissolution of marriage, (2)

the court's credibility determinations, and (3) the rationale underlying the court's division of marital assets and debts. Most important to the resolution of this appeal, the court—after noting its consideration of the appropriate statutory factors provided by section 504(a) of the Marriage Act—determined that under the circumstances presented, maintenance in gross was an appropriate award to ensure respondent satisfied his portion of the 10-year repayment obligation imposed by Amanda's postgraduate educational loans.

¶ 33 In his brief to this court, Michael posits that "the [trial] court's careful calculations in its [m]emorandum of opinion as to contributions from the marital estate to the non[]marital estate and reimbursements therefore which form the basis of the court's award of \$90,000 worth of maintenance *** is arithmetically correct." Despite this acknowledgement, Michael cites *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 404-05, 639 N.E.2d 953, 957 (1994), in which this court affirmed the trial court's decision not to award either retired party periodic maintenance because (1) the marriage only lasted six years and (2) each party was able to support their marital lifestyle. Relying on *Albrecht*, Michael then claims that Amanda "has more than enough income to cover her expenses."

¶ 34 Michael's reliance on *Albrecht* is unpersuasive because in that case—as we have previously noted—this court affirmed the trial court's decision not to grant periodic maintenance under the specific facts presented, which are distinctly different than the facts presented in the instant case. Moreover, our affirmance in *Albrecht* merely represented that the court acted within its discretion. In other words, of all the possible determinations the court could have made to resolve the remaining ancillary issues in *Albrecht*, the court acted within its discretion by not awarding maintenance.

¶ 35 In support of his argument that maintenance in gross was not warranted under the

facts presented, Michael also cites several cases that frown upon the award of maintenance in gross. However those cases predate the enactment of the Marriage Act, which now governs our review. See *Struckoff v. Strukoff*, 76 Ill. 2d 53, 56, 389 N.E.2d 1170, 1170-71 (1979) (confirming that the Marriage Act became effective on October 1, 1977).

¶ 36 We similarly reject Michael's argument that the trial court abused its discretion by requiring him to reimburse the marital estate \$37,054. In this regard, the court not only considered evidence regarding the reduction of Michael's premarital debt over the course of the marriage, but also expenditures the marital estate made for (1) taxes, insurance, and residential maintenance costs; (2) boat slip fees and operating expenses; (3) dental and medical expenses for Michael's daughter; and (4) attorney fees associated with Michael's previous marriage. As the court correctly noted, the \$37,054 amount represented a portion of the marital contributions made toward Michael's premarital debts, which Michael does not dispute.

¶ 37 We commend the trial court for its conscientious memorandum of opinion, which assisted this court. Despite Michael's claim to the contrary, we find no basis to conclude that the court abused its discretion by awarding Amanda maintenance in gross and requiring Michael to reimburse the marital estate.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the trial court's judgment.

¶ 40 Affirmed.