

¶ 2 Charles and Christine were married in 1985, separated in 1995, but not divorced until 2012. In a supplemental judgment, the trial court awarded Christine permanent maintenance. The trial court denied Charles's motion to reconsider this award. Charles appeals arguing that an award of maintenance was improper at that time because the court had not yet completed its property distribution. He also argues that the trial court abused its discretion in awarding permanent maintenance because Christine had lived independently for the past 17 years. We affirm.

¶ 3 **FACTS**

¶ 4 After 15 years of separation from Christine, Charles filed for divorce in March 2010. Christine filed her counterpetition in which she requested temporary relief, and stated that while she was employed, she lacked sufficient funds to be self-supporting. Christine's request was denied. In October 2012, the trial court dissolved the marriage. Each side submitted a proposed judgment and a position paper to the court. Charles claimed that he had not provided Christine with any monetary assistance for the entirety of their separation, and for that reason, he argued that maintenance was inappropriate. Christine asked for \$600 per month in maintenance "to be reviewed when and if Wife begins receiving her awarded portion of Husband's retirement benefits pursuant to Railroad Retirement Act." In an amended position statement, Christine asked for \$1,000 per month in permanent maintenance. One month later, the trial court entered the supplemental judgment for dissolution of marriage at issue in this appeal.

¶ 5 The trial court awarded the Cahokia marital home and debt to Charles. The home had no equity as of 2012.

¶ 6 The court determined that a \$9,000 worker's compensation settlement received by Christine and any eventual award or settlement for Charles's 2010 work injury were marital property, and subject to division.

¶ 7 The trial court awarded each party their respective vehicles and any associated debt. Charles was awarded bank and investment accounts in his name. Christina was awarded all of her bank accounts. Both parties were awarded all personal property in his or her possession. Charles was awarded his Alliance Benefit 401(k) account with an approximate value of \$19,330, and Christine was awarded her YMCA retirement fund worth approximately \$21,132. The trial court awarded Christine 50% of the marital portion of Charles's non-tier I benefits under the Railroad Retirement Act.

¶ 8 Turning to the maintenance request, the trial court noted that Charles was 58 years old, and Christine was 56 years old. Charles was a railroad worker but is currently disabled from injuries sustained in a February 2010 accident. The trial court found that Charles's total monthly net income was \$2,719. The majority of that amount was from his disability benefits with an additional \$400 per month attributed to rental income. Christine worked part-time for World Management, Inc., formerly known as MERS Goodwill, and she cleaned a church once per week. She received no employment benefits. Christine had a monthly net income of \$832. The trial court noted that Christine has a limited earning ability, learning difficulties, as well as health problems with her back, neck, and knees. She received health insurance benefits through Charles's railroad employment, but the railroad discontinued those benefits after Charles's work

injury. Based upon those figures, the trial court awarded Christine \$600 each month in permanent maintenance.

¶ 9

ANALYSIS

¶ 10 The propriety, amount, and duration of a maintenance award are matters which lie within the trial court's discretion and will not be overturned on review absent an abuse of that discretion. *In re Marriage of Hart*, 195 Ill. App. 3d 839, 851, 551 N.E.2d 737, 744 (1990).

¶ 11 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2010)) provides that the court may award temporary or permanent maintenance and that the amount of maintenance and the time period during which maintenance is to be paid shall be determined after the court has considered all relevant factors. The statutory factors that must be considered are the income and property of each party including marital and nonmarital properties, each party's needs, the present and future earning capacity of each party, any impairment of future earning capacity due to one party devoting time to domestic duties or otherwise having foregone or delayed educational or employment opportunities, the time necessary to enable the party seeking maintenance to acquire appropriate education and training, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the parties, the tax consequences of the property division upon each party's economic circumstances, contributions and services by a party to the other party's education, training, or career, any agreement between the parties, and any other factor that the court finds to be just and equitable. 750 ILCS 5/504(a) (West 2010).

¶ 12 No one statutory factor is dispositive in a maintenance determination. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157, 621 N.E.2d 929, 934 (1993). The standard for the court to use in awarding maintenance is the party's reasonable needs in view of the standard of living established during the marriage. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 773, 690 N.E.2d 1023, 1027 (1998) (quoting *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972, 605 N.E.2d 670, 676 (1992)). The party seeking maintenance must make efforts to obtain employment. *In re Marriage of Stam*, 260 Ill. App. 3d 754, 757, 632 N.E.2d 1078, 1080 (1994). Courts must balance the goal of meaningful employment against "a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage." *Id.* We also note that the party seeking maintenance should not have to sell or impair assets awarded in a property distribution to provide for his or her own support. *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378-79, 571 N.E.2d 1135, 1140 (1991).

¶ 13 **Incomplete Property Distribution**

¶ 14 We first address the matter of the property distribution. Charles claims that the trial court erred in the timing of the maintenance award. The court's order was not 100% final because Charles has not received his final award for his work-related injury. He argues that a trial court cannot award maintenance until all marital assets are determined and divided. *In re Marriage of Amato*, 80 Ill. App. 3d 395, 397, 399 N.E.2d 1018, 1020 (1980).

¶ 15 Charles did not raise this issue in the trial court, and therefore he cannot raise the issue for the first time on appeal. *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279, 545 N.E.2d 731, 733 (1989). While we could consider the issue waived, we choose to consider this issue and find that Charles's argument has no merit.

¶ 16 The *Amato* case is an older case and predates the substantial rewrite of section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act). The original 1977 Act disfavored maintenance in favor of property division to accomplish the goal of self-sufficiency of the spouse seeking maintenance. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 835, 633 N.E.2d 82, 96-97 (1994) (Steigmann, J., specially concurring). The 1993 rewrite of section 504 obligated the courts to consider all factors, including property division, in granting or denying a request for maintenance. 750 ILCS 5/504 (West 1992); *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 768, 725 N.E.2d 22, 24-25 (2000). A trial court is not required to give every factor equal weight, so long as the overall balance is reasonable under the circumstances. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543, 548 (2010).

¶ 17 Although the court in *Amato* stated that it could not find that the wife needed maintenance until after the assets were divided, the court's statement was in the context of the older version of section 504 of the Act. The court stated that both child support and maintenance were connected to the final property disposition. *In re Marriage of Amato*, 80 Ill. App. 3d at 397, 399 N.E.2d at 1020. The *Amato* court cited to the committee comments that encouraged the courts " 'to provide for the financial needs of the spouses by property disposition rather than by an award of maintenance. ' " *Id.* (quoting 9A

Uniform Laws Annotated 161 (1979)). The court stated that the statutory scheme of section 504 allowed the court "to award maintenance only if the spouse seeking it lacks sufficient property and is unable to support herself. *Id.*

¶ 18 Charles cites, and we are aware of, no case holding that a court should deny maintenance because one asset is outstanding. The Act, as presently worded, does not require the court to wait until final resolution of all pending litigation and claims before awarding maintenance.

¶ 19 In this case, the trial court divided all property except for Charles's potential personal injury settlement, which the court categorized as marital property. With respect to the pending award, the trial court noted:

"Wife is awarded her worker's compensation settlement worth about \$9,000.00. However, this court can take into consideration the fact that Wife was awarded this settlement amount when it determines the division of settlement proceeds and/or award associated with Husband's personal injury action ***."

We find that the trial court's order of maintenance was within its sound discretion. The court considered the statutory factors and acknowledged there could be a future asset to divide. Depending upon the amount of Charles's settlement/award, and the court's decision on division of the asset, the court may or may not need to revisit the issue of permanent maintenance.

¶ 20 Award of Maintenance

¶ 21 Charles next argues that the trial court's maintenance award amounted to an abuse of the trial court's discretion.

¶ 22 No Decreased Standard of Living. Charles first argues that Christine has not suffered a decreased standard of living, and therefore the maintenance award was improper. In support of this argument, he cites *In re Marriage of Reynard*, which states that: "The benchmark determination when awarding maintenance is the 'reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, *** the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the nonmarital property.'" *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 791, 801 N.E.2d 591, 596 (2003) (quoting *Tietz*, 238 Ill. App. 3d at 972, 605 N.E.2d at 676). The relevant time period for a proper analysis of whether maintenance is appropriate is the date of the hearing and must be determined in the context of the circumstances of the parties at that time. *Id.*

¶ 23 As factual support, Charles contends that the parties have lived separately since 1995, and that throughout those years, he has provided Christine with no support, and she has been able to provide for her own needs. On that basis, he argues that she has no reasonable need for maintenance in order to maintain that standard of living.

¶ 24 A review of the trial record reflects how Christine met her needs. Until Charles had his work-related injury, she had health insurance through his railroad employer. After he was unable to work for the railroad because of his injury, Christine's health benefits were eliminated. As she has continuing medical issues, she is in need of health insurance and would need to get her own insurance in order to maintain that aspect of her standard of living.

¶ 25 From 1995 until 2002, Christine stayed in the marital home. She made all mortgage, insurance, utilities, and real estate tax payments without any assistance from Charles. She asked him for assistance, but he declined her request. In 2002, unable to continue with these bills, she quitclaimed the property back to him, and he then rented the property to relatives at the rate of \$400 per month. In order to obtain a new rental place to live after moving out of the marital home, Christine's son had to cosign the lease with her.

¶ 26 In general, Christine was able to meet her expenses on her income during those years only because she received two settlements—her worker's compensation settlement and her insurance settlement, and monetary assistance from her children and her grandchildren.

¶ 27 We disagree with Charles's claim that Christine adequately maintained the standard of living to which she was accustomed in the years they lived separately. While married and living together, she had all basic necessities in life covered—shelter, food, and insurance. From Christine's testimony, during the years that she was on her own she financially struggled.

¶ 28 Christine's Employability. Charles next argues that the trial court's award of permanent maintenance is inappropriate because it is not certain that Christine is unemployable or only employable at an income substantially lower than her previous standard of living. He cites to *In re Marriage of Haas*, 215 Ill. App. 3d 959, 964, 574 N.E.2d 1376, 1379 (1991), and argues that the facts of this case are similar to those of *Haas*—that the wife in *Haas* was employed throughout the marriage.

¶ 29 Instead of supporting his position, we conclude that the case supports Christine's argument and the trial court's order. The wife in *Haas* claimed that the \$600 monthly maintenance awarded by the trial court was insufficient to support her ability to take vacations and enjoy restaurant dining. The appellate court reviewed the record and concluded that while she had less disposable income than her ex-husband, she was able to do all that she wanted to do, and was even able to save money with the \$600 monthly maintenance award. Other than the fact that both wives were employed, we do not find that *Haas* has any other factual similarities or provides legal support for Charles's position.

¶ 30 Christine testified that the YMCA terminated her employment because of learning problems. She works at World Management on a part-time basis and cleans a church once each work for an extra \$40 per week of income. She has no health benefits with either job. She testified that she tried to find other employment without success. Her ability to find alternate employment is limited by her physical ailments (her back, neck, and knees) and her learning disabilities. The trial court concluded, and we agree, that Christine's earning capacity is limited, and that without maintenance, she would not be able to provide for her own reasonable needs, as formerly enjoyed during the marriage.

¶ 31 Decrease in Charles's Standard of Living. Charles next argues that forcing him to pay \$600 in maintenance would decrease his own standard of living. He claims that Christine would have more disposable income than he would.

¶ 32 Evidence provided by Charles established that he had a monthly income of \$2,719. At a later hearing, he argued to the court that he no longer received \$400 in monthly

rental income, and that therefore his income had been reduced by that amount. The trial court found this claim to be suspicious on the basis that Charles's mother did not testify to support her son's claim that she no longer paid him rent, and because she only "stopped paying rent" after the trial court entered its judgment awarding Christine permanent maintenance. The trial court categorized this change in his income as voluntary. Charles alleges that his monthly expenses far exceed his income—that he has \$4,103.24 per month in expenses. However, Charles's trial testimony revealed that several of his expense numbers were inflated. He listed renter's insurance at \$770 per month, when the \$770 was an annual rate, bringing the monthly amount down to approximately \$64. He claimed real estate taxes of \$1,112, but during his testimony dropped the amount to \$340. Repair/maintenance expenses were listed at \$500 per month, but his trial testimony was that those expenses actually totaled \$100 per month. Charles gave similar trial testimony about his monthly rent, clothing expenses, recreation, laundry and cleaning, medical, dental, and drug expenses that were all inflated in his financial statement. Subtracting \$600 from his monthly incomes leaves him with \$2,119. Having reviewed the expense and income data and Charles's trial testimony, wherein he acknowledged much lower monthly expenses than he originally reported to the court, we do not agree that his own standard of living would significantly decrease by requiring him to pay maintenance. "Because, in reality, two households are more costly than one, most parties are not able to afford the same standard of living they enjoyed when living together. In those circumstances, the court must apportion the deficit, balancing the parties' claims to their

remaining incomes." *In re Marriage of Keip*, 332 Ill. App. 3d 876, 880, 773 N.E.2d 1227, 1230 (2002).

¶ 33 Christine's Health. Charles next argues that Christine's health did not warrant the court's award of permanent maintenance. This argument is raised for the first time in this appeal, and we find that the argument has been waived. *In re Marriage of Rodriguez*, 131 Ill. 2d at 279, 545 N.E.2d at 733.

¶ 34 No Significant Disparity in Income. Charles also argues that there is no significant disparity in income between the parties and that therefore there was no need for an award of permanent maintenance. Christine's monthly income is \$832, while Charles's monthly income is \$2,719. We find the fact that Charles earns more than three times what Christine does a significant disparity in income under the circumstances here.

¶ 35 The United States Department of Health and Human Services lists the poverty guidelines for an individual in 2012 at \$11,170. *Poverty Guidelines*, U.S. HEALTH & HUMAN SERVICES, <http://aspe.hhs.gov/poverty/12poverty.shtml>. Christine's annual net income of \$9,984 places her at the poverty level.

¶ 36 Charles cites to the case of *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 392, 890 N.E.2d 1232, 1235-36 (2008), in support of his position. In *Bratcher*, the appellate court concluded that it was not necessary to equalize the parties' income in order to maintain the standard of living enjoyed during the marriage. *Id.* at 392, 890 N.E.2d at 1235-36. "[M]aintenance is not the absolute right of every party to a marriage and should mainly be reserved for circumstances of necessity." *Id.* at 390, 890 N.E.2d at 1234. In *Bratcher*, the property distribution, which the trial court divided almost equally and

which amounted to several million dollars, was critical to the court's analysis. *Id.* at 392, 890 N.E.2d at 1236. The wife was awarded a \$876,759 lump-sum payment referred to by the appellate court as maintenance in gross, which the court believed eliminated any inequity. *Id.* at 391-92, 890 N.E.2d at 1235-36. Because of the stark financial factual differences involved in the *Bratcher* case and the case before us, we find *Bratcher* of little value to our analysis. If anything, the *Bratcher* court's statement that "maintenance *** should mainly be reserved for circumstances of necessity" would seem to apply to someone like Christine who is living below the poverty level. *Id.* at 390, 890 N.E.2d at 1234.

¶ 37 The Established Marital Standard of Living Ended in 1995. Charles also argues that any standard of living they enjoyed during the marriage ended in 1995 when he moved out. From the testimony at trial, it appears that Charles's standard of living did not decrease. When he moved out of the marital home, he moved into another woman's home. He did not contribute to the living expenses of either woman. While Charles enjoyed the same standard of living after leaving the marital home, Christine clearly did not.

¶ 38 We have already concluded that Christine had a lesser standard of living than she enjoyed during the years of marriage when they cohabitated. Additionally, we reject Charles's argument that Christine was financially independent during those years of separation. Therefore, we do not agree with Charles's contention that the courts should not review the marital standard of living for the duration of the marriage whether or not he lived with Christine the entire time.

¶ 39 Length of the Marriage. Finally, Charles argues that it was error for the trial court to have considered the length of the parties' marriage as a factor warranting maintenance. He claims that since he moved out in 1995, citing to the length of the marriage as a factor in support of the award amounts to an abuse of discretion. We disagree. First of all, we note that the length of the marriage is only one factor to consider. The trial court's order clearly indicated numerous factors it considered in arriving at Christine's award of maintenance. We also note that from the testimony, although Charles moved out in 1995, Christine was unaware of this other woman. She testified that although he left the marital home, he moved in and out of the marital home over the years. Essentially, the definitive separation date of 1995 was not as clear-cut to Christine. We find no reason to conclude that the trial court's consideration of the length of the marriage constituted an abuse of discretion.

¶ 40

CONCLUSION

¶ 41 We find that the trial court properly considered all statutory factors before arriving at the award of permanent maintenance. The award was necessary for Christine so that she would have the ability to provide for her reasonable needs. The maintenance award did not serve to equalize the income, but served to provide for Christine's needs in an affordable amount for Charles. We find that the award is not overly burdensome and that Charles's standard of living will not be decreased. The trial court did not abuse its discretion in awarding permanent maintenance.

¶ 42 After Charles receives his settlement from his work-related injury, the parties will need to return to court to have that award fairly divided as contemplated by the court's

order. At that time, depending upon the award, the trial court could determine whether the award should be adjusted or eliminated depending upon the division.

¶ 43 For the reasons stated in this order, we affirm the judgment of the St. Clair County circuit court.

¶ 44 Affirmed.