

NOTICE
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2014 IL App (5th) 130263-U

NO. 5-13-0263

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
KELLY G. REES,)	Randolph County.
)	
Petitioner-Appellee,)	
)	
and)	No. 12-D-82
)	
WILLIAM R. REES,)	Honorable
)	Eugene E. Gross,
Respondent-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court's order regarding maintenance, property division, pension distribution, and award of attorney fees to the petitioner affirmed where findings were not an abuse of discretion.

¶ 2 The respondent, William R. Rees, appeals the April 17, 2013, judgment of the circuit court of Randolph County that ordered William to pay the petitioner, Kelly G. Rees, rehabilitative maintenance in the amount of \$1,000 per month, ordered William to pay \$5,750 of Kelly's attorney fees, ordered certain distributions of proceeds from the sale of the marital home, and used the *Hunt* formula to calculate the distribution of

William's retirement pension earned through his employment.¹ For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The parties were married on October 19, 1991. One child was born to the parties and William adopted Kelly's oldest child. On June 19, 2012, Kelly filed a petition for a dissolution of the marriage and a petition for, *inter alia*, temporary maintenance and attorney fees. The circuit court entered an order on September 5, 2012, awarding temporary maintenance to Kelly in the amount of \$2,000 per month, and ordering William to continue paying the mortgage on the marital home, as well as the taxes, monthly credit card payments, and the parties' daughter's car payment, while the litigation was pending. William filed a motion to reconsider on October 4, 2012. The circuit court subsequently entered a consent order on March 6, 2013, in which William agreed, *inter alia*, that he was \$6,000 in arrears for three months of temporary maintenance payments and that amount would be paid to Kelly from proceeds of the sale of the marital home.

¶ 5 A hearing to address the remaining issues was conducted on April 4, 2013. Evidence and testimony presented at the hearing was as follows. Kelly testified that she works as a hairstylist in Steeleville, as she also did during the marriage. She purchased a hair salon in 2007 and remodeled it in 2009. Kelly testified that there are five styling stations at the salon, but only three are active because attracting more stylists to work in a

¹The original judgment of dissolution was modified after a motion to reconsider, to use the *Hunt* formula to distribute William's pension benefits when he retires.

small town is difficult. Kelly reported that the most money she ever made at the salon occurred in the 2012 tax year and totaled \$9,000, or approximately \$750 per month. Kelly also receives the interest from a trust her grandfather left, and she expects to continue receiving such interest for life. Although the dividend amounts vary, the amount for the current year was \$2,600. Kelly averred that William had not paid the temporary maintenance as ordered by the circuit court. Accordingly, she was required to borrow money from her grandmother to meet her living expenses.

¶ 6 Kelly testified that she was still on William's insurance, but she had made phone calls regarding the cost of obtaining her own health insurance. In doing so, she discovered that she qualified under Blue Cross-Blue Shield with premiums of approximately \$300 per month and an annual deductible of \$1,750. After the deductible, the insurance would pay 80% of her medical bills, leaving her responsible for the remaining 20%. The insurance would not cover any of her medication, which costs \$80 per month. Kelly inquired about obtaining COBRA coverage through William's employer, but she could not afford the premiums of \$800 per month.

¶ 7 Regarding property division, Kelly requested the circuit court to award her, *inter alia*, \$41,000 from the sale of the marital home, as well as maintenance in the amount of \$1,650 per month. Moreover, Kelly's attorney fees totaled \$11,515.11 to date and she asked to be awarded 60% of that amount. Kelly testified that William failed to make the mortgage payments on the marital home while the litigation was pending, as ordered by the circuit court, thereby resulting in payment arrearages, foreclosure expenses, and unpaid interest, which Kelly requested that William pay.

¶ 8 William testified that he is employed as a correctional shift supervisor at Menard Correctional Center, where he has been employed for 28 years. Although William earned approximately \$95,000 during the year preceding the hearing, he conceded that he defied the circuit court's September 5, 2012, order and stopped making temporary maintenance payments in December 2012. Moreover, William admitted that he never made a single mortgage payment as ordered, resulting in the initiation of foreclosure proceedings and an accumulation of \$5,400 in expenses associated therewith. William further conceded that he did not make any credit card payments as ordered, nor did he make the required payments on the parties' daughter's car, resulting in a near repossession.

¶ 9 The circuit court entered a judgment of dissolution of the marriage on April 17, 2013, in which its previous order of temporary maintenance was modified to \$1,000 per month, retroactive to April 15, 2013, and reviewable in June 2015, upon petition by William. Pursuant to the consent order entered March 6, 2013, \$6,000 was given to Kelly immediately after the sale of the marital home to pay for William's maintenance arrearages.² Also pursuant to the consent order, \$10,000 was given to Kelly's attorney and held in an escrow account pending the negotiation of a marital credit card debt of approximately \$12,000. That amount was negotiated by Kelly's attorney for \$6,000,

²William's subsequent allotted proceeds from the sale of the marital home were reduced by \$3,000 and added to Kelly's allotted proceeds to avoid Kelly's paying for half of her own maintenance fees, as the \$6,000 was taken immediately following the sale of the home and before any division occurred.

leaving \$4,000 in the escrow account which was subsequently applied as partial payment of a \$5,750 award of attorney fees to Kelly.³

¶ 10 After the deduction of the above amounts, the total remaining deposit following the sale of the marital home was \$49,639.37. Kelly was awarded \$36,085.31 of that total, less \$4,250 for her responsibility of the parties' daughter's college loan, as ordered by the circuit court, less \$1,750 due for the remainder of her \$5,750 award of attorney fees,⁴ leaving her with \$30,085.31. This final net disbursement incorporated the additional amounts for the unpaid maintenance payments as outlined above, the additional housing expenses caused by William's failure to pay the mortgage and the associated foreclosure costs, as well as the court-ordered attorney fees to Kelly. After the amounts for the above expenses were deducted from William's portion of the proceeds from the sale of the home and awarded to Kelly, his remaining portion totaled \$9,304.06. This amount also incorporated William's share of the parties' daughter's student loan, as ordered by the circuit court. Finally, the circuit court awarded Kelly 38.31% of William's state-provided

³William's subsequent allotted proceeds from the sale of the marital home were reduced by \$2,000 and added to Kelly's allotted proceeds to avoid Kelly's paying for half of her own attorney fees award, as the \$4,000 was taken immediately following the sale of the home and placed into the escrow account before any division occurred.

⁴An additional \$1,750 was deducted from William's allotted proceeds from the sale of the marital home and given to Kelly to avoid Kelly's paying for her own attorney fees award.

annuity retirement benefits upon his retirement, a percentage which was figured by the parties under the assumption that William would retire within the next 18 months to 2 years. Both parties filed motions to reconsider.

¶ 11 In his motion to reconsider, William requested the following: (1) that the circuit court make its \$1,000 monthly maintenance award retroactive to October 4, 2012, the date he filed his motion to reconsider the temporary maintenance award, (2) that the circuit court reconsider its award of \$5,750 for Kelly's attorney fees, and (3) that the circuit court modify the retirement distribution to allot Kelly 50% of the marital share of William's retirement pension with an allowance for cost-of-living increases.

¶ 12 In her motion to reconsider, Kelly pointed out, *inter alia*, that since the dissolution hearing, William recanted his previous plan to retire within two years and expressed his intent to continue working indefinitely. Accordingly, Kelly requested that William's retirement pension be disbursed in accordance with the *Hunt* formula, which equals the number of years married and in the plan, over the total number of years in the plan, multiplied by 50%, which would account for any salary increases and cost-of-living allowances William may receive until he actually retires. Kelly additionally requested the circuit court to increase her maintenance award to \$1,500 monthly.

¶ 13 At the conclusion of the hearing on the motions to reconsider, the circuit court modified the judgment of dissolution only to the extent that the *Hunt* formula would be used in disbursing William's retirement pension. William filed a timely notice of appeal. Additional facts will be provided as necessary in our analysis of the issues on appeal.

¶ 14

ANALYSIS

¶ 15 William raises the following issues on appeal, which are restated as follows: (1) whether the \$1,000-per-month maintenance award was excessive, (2) whether the circuit court erred by failing to apply the maintenance award retroactively to October 4, 2012, the date William filed his motion to reconsider the temporary maintenance award, (3) whether the circuit court erred in its distribution of the proceeds from the sale of the marital home, (4) whether the circuit court erred by ordering William to contribute \$5,750 to Kelly's attorney fees, and (5) whether the circuit court erred by using the *Hunt* formula in distributing William's retirement pension, rather than awarding a set dollar amount.

¶ 16

I. *Maintenance Award Amount*

¶ 17 William first asserts that the \$1,000-per-month maintenance award was excessive. "As a general rule, 'a trial court's determination as to the awarding of maintenance is presumed to be correct.' " *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008) (quoting *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063 (2005)). "Because maintenance awards are within the sound discretion of the trial court, we will not disturb a maintenance award absent an abuse of discretion." *Id.* "An abuse of discretion exists only where we can conclude that no reasonable person would take the view adopted by the trial court." *Id.* at 651.

¶ 18 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) enumerates the factors courts should utilize when considering an award of maintenance. 750 ILCS 5/504(a) (West 2012). "In awarding maintenance, the trial court has wide

latitude to consider the needs of the parties and is not limited to the factors enumerated in section 504." *In re Marriage of Schiltz*, 358 Ill. App. 3d 1079, 1084 (2005). No one statutory factor is dispositive in a maintenance determination. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157 (1993). The benchmark for awarding maintenance is the evaluation of 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 (1998).

¶ 19 In this case, several factors support the maintenance award. The parties were married for nearly 22 years (750 ILCS 5/504(a)(7) (West 2012)), which makes a maintenance award proper. In looking at the standard of living established during the marriage (750 ILCS 5/504(a)(6) (West 2012)), the combined income of the parties exceeded \$100,000 annually. William earns \$95,000 per year and the most Kelly had ever earned at the salon was \$9,000 per year, besides the \$2,600 she earned from the trust interest the current year. Kelly testified that her rent is \$500 per month and William testified that his monthly rent is \$400 per month. Kelly testified further that she had to borrow money to meet her living expenses when William stopped making the temporary maintenance payments. Without the combined marital income, it will be impossible for Kelly to maintain the standard of living she enjoyed during the marriage on her income alone, and the maintenance award is supported by this factor.

¶ 20 Regarding the income of each party (750 ILCS 5/504(a)(1) (West 2012)), as observed, there is a significant disparity in income between the parties, which supports the maintenance award. William earns \$95,000 per year and Kelly earns less than \$12,000 per year. There is no indication that either party will be hindered in any way

from earning income in the future, but there is also no indication that Kelly will be able to earn any more than the amounts she testified to at the hearing (750 ILCS 5/504(a)(3)-(4) (West 2012)), as she plans to continue working as a hair stylist and her salon is in a small town where she has been unable to fill her salon stations to capacity for a number of years. We find these facts supportive of the maintenance award.

¶ 21 Regarding property (750 ILCS 5/504(a)(1) (West 2012)), William argues that the disproportionate shares from the proceeds of the sale of the marital home entitle Kelly to a reduced maintenance award. We disagree. While Kelly received \$30,085.31 and William received \$9,304.06 from the proceeds, we note that William's share was reduced to compensate for the additional expenses incurred due to his failure to abide by the circuit court's September 5, 2012, order to make various payments while the dissolution proceedings were pending. Accordingly, we find the distribution of property supports the maintenance award.

¶ 22 In light of the evidence supporting the maintenance award in consideration of the above factors, we cannot say that no reasonable person would have taken the view adopted by the circuit court. See *In re Marriage of Heroy*, 385 Ill. App. 3d at 651. Accordingly, the circuit court did not abuse its discretion in awarding Kelly \$1,000 per month in maintenance. We add that the circuit court made the maintenance award reviewable in June 2015, if William chooses to file a motion requesting such review, thereby lending more credence to the reasonableness of the award.

¶ 23

II. *Maintenance Award Retroactivity*

¶ 24 William next claims that the circuit court should have applied its maintenance award retroactively to October 4, 2012, the date he filed his motion to reconsider the temporary maintenance award. Temporary maintenance may be awarded, pursuant to section 501(a)(1) of the Act (750 ILCS 5/501(a)(1) (West 2012)). Trial courts have wide latitude in awarding temporary maintenance and such awards may not be reversed absent an abuse of discretion. See *In re Marriage of Greenberg*, 102 Ill. App. 3d 938, 941 (1981). William challenges the circuit court's decision to make the \$1,000 maintenance award retroactive to April 15, 2013, rather than October 4, 2012, and he criticizes the circuit court for not addressing his motion to reconsider until the hearing on all remaining issues on April 4, 2013, which he claims caused him a great financial hardship.

¶ 25 The record belies William's argument, as the circuit court entered a consent order on March 6, 2013, in which William, *inter alia*, consented and agreed that he owed Kelly \$6,000 in maintenance arrearages and that the same would be paid to her from the proceeds of the sale of the marital home. Having consented to the above terms of the consent order, William has no grounds to now complain that the circuit court failed to address his motion to reconsider, which was filed five months before the consent order was entered.

¶ 26 We also find reasonable the circuit court's decision, given the significant disparity of income between the parties, as well as William's failure to make the requisite payments as ordered by the circuit court while the dissolution proceedings were pending. Despite the fact that William's net monthly earnings exceed \$7,000, he defied the circuit

court's September 5, 2012, order and stopped making temporary maintenance payments in December 2012, never made a single mortgage payment as ordered, resulting in the initiation of foreclosure proceedings and an accumulation of \$5,400 in related expenses, never made any credit card payments as ordered, and never made any payments on the parties' daughter's car, which was nearly repossessed due to his failure. In light of these facts, we find it a stretch to imagine how the circuit court's decision caused William great financial hardship as he alleges. For the above-stated reasons, we find the circuit court did not abuse its discretion by applying the \$1,000-per-month maintenance award retroactively to April 15, 2013, rather than October 4, 2012.

¶ 27

III. *Marital Home Proceeds*

¶ 28 William's next issue on appeal is whether the circuit court erred in its distribution of the proceeds from the sale of the marital home. The distribution of marital property lies within the sound discretion of the circuit court, and we will not disturb its judgment on review absent an abuse of discretion. *In re Marriage of Eidson*, 235 Ill. App. 3d 907, 911 (1992). Section 503(d) of the Act directs courts to divide marital property in just proportions, and enumerates the factors courts should utilize when so dividing. See 750 ILCS 5/503(d) (West 2012). In review of this issue, we are mindful that "[a]n equitable award does not require that the marital estate be divided equally." *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 887 (1987).

¶ 29 In this case, Kelly received \$30,085.31 after the sale of the marital home and William received \$9,304.06. As noted in our analysis of the previous issues, this disparity was due to William's defiance of the circuit court's September 5, 2012, order,

which resulted in significant additional expenses which would not have otherwise existed. Bearing this in mind, we now turn to the factors of section 503(d).

¶ 30 Kelly was awarded \$1,000 per month in maintenance, reviewable in June 2015 (750 ILCS 5/503(d)(10) (West 2012)). The parties were married for nearly 22 years (750 ILCS 5/503(d)(4) (West 2012)), during which both parties contributed to the acquisition and preservation of the marital home (750 ILCS 5/503(d)(1) (West 2012)), as both were employed during the marriage. Regarding the economic circumstances of the parties at the time the division was made (750 ILCS 5/503(d)(5) (West 2012)), as well as the opportunity of each party for future acquisition of income (750 ILCS 5/503(d)(11) (West 2012)), as earlier established, between the two parties, William has a much greater present and future earning capacity. Kelly earns less than \$12,000 per year and there is nothing to indicate that her income will increase substantially in the future. William, on the other hand, earns \$95,000 per year, which far exceeds Kelly's income. After taking into consideration all of the relevant factors in section 503(d), we find that the division of the proceeds of the marital home was equitable, and we cannot say that no reasonable person would have taken the view adopted by the circuit court. Accordingly, the circuit court did not abuse its discretion in its allocation of the proceeds from the sale of the marital home.

¶ 31

IV. *Attorney Fees*

¶ 32 The next issue on appeal is whether the circuit court erred by ordering William to contribute \$5,750 to Kelly's attorney fees. "[This] court uses a deferential standard of reviewing the award *** of attorney fees and costs. A trial court has discretion to decide

the issue, and the court's decision will not be reversed absent an abuse of that discretion." *In re Marriage of Thomas*, 339 Ill. App. 3d 214, 224 (2003). "As a general rule, attorney fees are the responsibility of the party who incurred the fees." *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007). However, "[s]ection 508 of the *** Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so." *Id.*

¶ 33 As already established in this case, a great disparity of income exists between the parties. William argues that the circuit court did not make any specific findings that Kelly had the inability to pay her attorney fees. Pursuant to section 508, "the trial court may, in its discretion *and after consideration of the financial resources of the parties*, order one spouse to pay *** attorney fees ***." (Emphasis added.) *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1084 (1997). It is clear that the circuit court considered the financial resources of the parties, as the income amounts are not only detailed in the judgment of dissolution, but also, in consideration of the maintenance award at the dissolution hearing, the circuit court clearly pointed out that "there's a great disparity in income between the parties." This evidence dispels William's argument that the circuit court did not consider Kelly's inability to pay the attorney fees.

¶ 34 William also contends that the award of attorney fees was an abuse of discretion because Kelly received a large share of the house sale proceeds, as well as her salon, which provides the means for her to cover her attorney fees. We are not persuaded by

this argument. Illinois law holds that "[i]t is not necessary for [a party] to be destitute in order for the court to award attorney fees [citation], nor is she required to liquidate her assets to pay her own fees before there can be a finding of inability." *In re Marriage of Pearson*, 236 Ill. App. 3d 337, 353 (1992). Financial inability to pay attorney fees "exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *In re Marriage of Schneider*, 214 Ill. 2d at 174. We find such to be the case here. As we previously noted, Kelly received the greater share of the house proceeds, not because of the income discrepancy between the parties, but because William repeatedly failed to make payments as ordered by the circuit court. If Kelly were required to pay all of her attorney fees using the money she received from the sale of the home, this requirement would strip her of her means of support and undermine her financial stability. See *In re Marriage of Schneider*, 214 Ill. 2d at 174. Kelly's net income is \$606.08 per month. Clearly, her share of the proceeds of the marital home will be needed to provide her additional financial stability. For these reasons, we reject William's argument.

¶ 35 William further contends that the award of attorney fees was an abuse of discretion because the circuit court did not make any adjustments for the usual and customary rate of the fees charged by Kelly's attorney. The record belies the same. When William's attorney made this argument at the hearing on the motion to reconsider, the circuit court stated: "I didn't give her all of her fees. I took that [sic] I adjusted it down based [sic] I agree with that position and I took that into consideration." We add that Kelly only requested 60% of her attorney fees which, at the dissolution hearing,

totaled \$11,515.11 and the circuit court ultimately awarded \$5,750. We find this award was not an abuse of discretion.

¶ 36

V. Retirement Pension

¶ 37 William's final issue on appeal is whether the circuit court erred by using the *Hunt* formula in distributing his retirement pension, rather than awarding a set dollar amount. We will not disturb the circuit court's choice of apportionment method of a retirement pension absent an abuse of discretion. See *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 243 (1997).

¶ 38 "Pension benefits attributable to contributions made during marriage are marital property and thereby subject to division upon dissolution of marriage." *In re Marriage of Culp*, 399 Ill. App. 3d 542, 546 (2010). "[T]he '*Hunt* formula[]' calculates the marital portion in each pension payment with 'a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to when paid.'" *Id.* at 551 (quoting *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 663 (1979)). "The *Hunt* formula, stated in 1979, is a widely used method for dividing pensions' marital portions under the reserved-jurisdiction approach ***." *Id.* at 553. "The General Assembly's subsequent endorsement of the *Hunt* formula by amending section 1-119 of the Illinois Pension Code to include it within QILDROs addressing the division of governmental pensions' marital portions [citation] further indicates the formula's widespread acceptance." *Id.*

¶ 39 Here, the circuit court stated that it used the *Hunt* formula because William no longer planned to retire in 18 months as he had earlier indicated and using the formula would not only account for any cost-of-living increases, but would also apply regardless of how many years William chose to work past retirement age. In recognizing this, the circuit court stated that if William "works ten more years, even if he doesn't get any promotions or pay raises, he'll get cost-of-living adjustments at a minimum, I would hope. *** But you would expect that his ending salary would be a little higher. That's really only fair for [Kelly] because she has to wait until he retires before she can draw the money." The circuit court used a widely accepted formula and its reasoning for doing so was not unreasonable. Accordingly, the circuit court did not abuse its discretion in applying the *Hunt* formula in this case.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the April 17, 2013, judgment of the circuit court of Randolph County, as modified by the oral pronouncement the circuit court made at the hearing on the motion to reconsider on May 15, 2013, with respect to applying the *Hunt* formula when William retires.

¶ 42 Affirmed.