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2015 IL App (5th) 140095-U

NOTICE
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NO. 5-14-0095

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
DIANA R. HUMBLES,)	St. Clair County.
)	
Petitioner-Appellant,)	
)	
and)	No. 12-D-919
)	
MARION S. HUMBLES,)	Honorable
)	Julie K. Katz,
Respondent-Appellee.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of dissolution in its entirety, finding that the trial court did not abuse its discretion in (1) ordering respondent to pay petitioner \$2,500 per month in permanent maintenance, (2) dividing marital assets, or (3) ordering respondent to pay only a portion of petitioner's attorney fees.

¶ 2 Petitioner, Diana R. Humbles, appeals from a judgment of dissolution entered in the circuit court of St. Clair County which *inter alia* awarded her \$2,500 per month permanent maintenance, divided marital assets, and ordered respondent, Marion S. Humbles, to pay a portion of petitioner's attorney fees. On appeal, petitioner contends the

trial court: (1) abused its discretion in failing to award her a larger amount of permanent maintenance; (2) erred in dividing the marital assets; and (3) abused its discretion in failing to require respondent to pay all of petitioner's attorney fees. We affirm.

¶ 3

BACKGROUND

¶ 4 The parties were married on August 21, 1982. Two daughters were born during the marriage, but both were emancipated by the time the judgment of dissolution was entered. During the marriage, the parties became guardians to Richard Hargrove when he was approximately 2½ years old. Hargrove graduated from high school and was attending college on a football scholarship, but lived with petitioner during breaks and summers. Petitioner originally filed a petition for judgment of dissolution on October 4, 2012. Respondent filed a response on October 15, 2012. Both parties filed financial statements. Over the course of the following year, there were several hearings during which the following evidence was adduced.

¶ 5 At the time of dissolution, respondent was 52 years old and employed at Mitre Corporation as a software advisor. He earned a bachelor's degree in computer science and during his career has continued to take ongoing computer software engineering courses. Respondent was expected to earn \$127,199.99 in 2013. Tax returns were admitted into evidence showing respondent's income was in excess of \$100,000 for several years prior to 2013. Respondent has health insurance coverage through his employer, and petitioner was covered under that plan. Respondent also has retirement accounts. Respondent testified his gross income is \$10,599.85 per month and his net

income is \$6,307.59. A previous financial statement filed by respondent listed his net income at \$7,139.68, but petitioner explained he started having more money withheld from his paycheck because he will owe more money in taxes next year as he will have less deductions. He testified that out of his net pay of \$6,307.59 per month he pays approximately \$2,245 per month for the mortgage and real estate taxes on the marital home.

¶ 6 Petitioner was also 52 years old and had been a homemaker for most of the parties' marriage. She took some college courses in the mid-1980's, but does not have a degree. She held some part-time jobs during the marriage, but respondent earned enough money to be financially responsible for all the family's expenses during the marriage. Petitioner worked part time as an advocate with CASA from 2007 until February 2010 when she quit because she was recovering from a broken ankle. Respondent testified he was fine with petitioner's quitting her part-time job where she earned approximately \$12 per hour. Petitioner began working part-time for Dr. Novak for \$12 an hour in September 2012 and worked there until she accepted a job at the Fountains of Shiloh in August 2013. Her job as a business manager at the Fountains was full time and paid \$13.25 per hour. Petitioner testified she would receive health benefits after working there 90 days.

¶ 7 However, at a later hearing, petitioner testified she never received any health benefits from the Fountains. Petitioner testified she quit her job at the Fountains because it entailed more work than what she initially thought and the stress caused by the job was affecting her health. Petitioner testified she was going to start a new part-time job at

Sam's Club working 20-24 hours per week at a pay rate of \$9.75 per hour. She was unsure whether she would be able to receive health benefits as part of her new job.

¶ 8 After receiving appraisals, the parties stipulated the fair market value of the marital home was \$325,000. As of June 11, 2013, there was a mortgage balance of \$84,265 on the house. Petitioner specifically asked that the marital home be sold and the equity divided because the house was too big for her.

¶ 9 Respondent testified he has a Roth IRA at Scott Credit Union worth \$40,216.36, and a retirement account with Mitre worth \$27,128.62, both which are marital property. The parties own a 2001 Ford F-150 truck with a Blue Book value of \$2,454, a 2003 Lincoln Aviator with a value of \$10,128, and a 1998 Pontiac Bonneville with a value of \$1,392. The parties also own a 1999 boat valued at approximately \$4,180. Petitioner testified she did not want the boat. Respondent testified he would like to keep the boat and the truck and petitioner could keep the Aviator and the Bonneville.

¶ 10 Petitioner inherited an antique glass collection from her mother currently valued at \$30,000. Respondent testified over the years the parties sold various pieces to pay bills. Respondent did not want the collection, but wanted half of its value. The parties accumulated marital property, including household furniture, musical instruments, tools, generators, a 1984 John Deere mower, an antique bedroom set, grills, jewelry, and appliances, which petitioner valued at \$9,930.

¶ 11 Petitioner submitted a financial statement in which she indicated she spent \$6,506.56 on her own monthly expenses and an additional \$2,034.91 on her emancipated

children's expenses. After it was pointed out to her that respondent does not even earn that much in a month, petitioner admitted she was unsure where all the money came from to pay those expenses. Petitioner was unsure how much she would actually need to live on each month. Petitioner admitted she took approximately \$28,000 out of the parties' joint accounts to use for living expenses during the parties' separation.

¶ 12 After hearing all the evidence, the trial court ordered respondent to pay petitioner permanent maintenance in the amount of \$2,500 per month, awarded petitioner 55% of respondent's Mitre 401K and 55% of all the IRAs owned by the parties, and awarded the marital home and debt thereon to respondent. The trial court ordered respondent to pay 55% of the equity in the home (approximately \$131,450) to petitioner within 60 days of the entry of judgment of dissolution, after which petitioner would be required to sign a quitclaim deed releasing her interest in the marital home to respondent. In the event respondent was unable to refinance the home, the trial court ordered it to be sold with the proceeds divided 55% to petitioner and 45% to respondent. Petitioner was awarded the Aviator and the Bonneville, while respondent was awarded the truck and boat.

¶ 13 The trial court found that neither party dissipated marital assets and divided the marital property between the parties, with petitioner receiving *inter alia* the antique glass collection. The trial court ordered respondent to assume all marital debt, with each party assuming any debt they incurred since their initial separation. The trial court ordered respondent to contribute \$6,000 toward the \$12,092.51 owed by petitioner for attorney fees and costs. Petitioner filed a timely notice of appeal.

¶ 14

ISSUES

¶ 15

I. MAINTENANCE

¶ 16 The first issue raised in this appeal is whether the trial court abused its discretion in ordering respondent to pay petitioner \$2,500 per month in permanent maintenance. Petitioner contends she was entitled to a greater award of permanent maintenance, while respondent contends the trial court did not abuse its discretion in ordering that amount.

¶ 17 Maintenance awards are governed by section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West 2010)). In awarding maintenance, a trial court should consider a number of factors, including 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 no single factor is determinative. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651, 895 N.E.2d 1025, 1038 (2008). Maintenance is generally awarded in an amount necessary to meet the recipient's reasonable needs in accordance with the standard of living the parties enjoyed during the marriage. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543, 548 (2010). The propriety, amount, and duration of a maintenance award are within the discretion of the trial court, and a reviewing court will not reverse unless it finds the trial court abused that discretion. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390, 890 N.E.2d 1232, 1234 (2008).

¶ 18 Here, the trial court's order shows it considered the statutory factors, particularly the length of the marriage, the disparity in income between the parties, petitioner's lack of a college degree, and petitioner's age. The trial court found it highly unlikely that petitioner would be able to obtain employment at a salary sufficient to support the standard of living she enjoyed during the marriage. For that reason, the trial court ordered permanent maintenance rather than rehabilitative maintenance. While petitioner insists the amount of \$2,500 per month is too low and seeks to have the award increased to \$3,500 per month, based upon the record before us, we cannot say the trial court abused its considerable discretion in awarding \$2,500 per month in permanent maintenance.

¶ 19 Petitioner filed a financial statement using amounts from the previous year before the parties separated. Included in this statement were monies paid on behalf of the parties' emancipated children, and these expenses are no longer applicable. Petitioner listed her income as \$664 per month, but later testified that she was earning \$503.50 gross wages per week as a business manager for the Fountains. At a later hearing, petitioner testified she quit her full-time job at the Fountains and was scheduled to start working the following week at Sam's Club on a part-time basis at a lower hourly wage than what she earned at the Fountains.

¶ 20 On the other hand, respondent testified he has a net income of \$6,307.59 per month. While petitioner contends that respondent's net income is \$7,139.68, our review of the record shows that amount was listed on an earlier financial statement, and respondent's net income declined due to a larger amount of money being withheld for

taxes. Accordingly, after subtracting \$2,245 for mortgage and taxes from respondent's net income of \$6,307.59, respondent is left with \$4,062.59. The trial court ordered respondent to pay over half of that amount, \$2,500 per month, to petitioner in permanent maintenance. This leaves respondent with \$1,562.59 per month to pay for additional expenses such as food, clothing, gas, and entertainment expenses.

¶ 21 The record before us shows that petitioner failed to set forth exactly what her expenses were per month after the parties' separation. It also shows that petitioner is employable, but quit a full-time, decent-paying job as a business manager because it was too stressful. It is difficult to discern what the present and future earning capacity of petitioner is in light of the fact that during the pendency of the dissolution proceedings, petitioner had three different jobs. What is clear from the record is that petitioner seems content to work only part time and at a reduced rate of pay. While petitioner contends she is being thrown out of her house, the record shows that petitioner got exactly what she wanted in this regard. Petitioner specifically asked that the marital home be sold and the equity split between the parties.

¶ 22 The trial court's order shows that the trial court considered the statutory factors and due to the length of the marriage, the disparity in incomes between the parties, and petitioner's age and lack of education, an award of permanent maintenance was necessary. Under these circumstances, we cannot say the trial court abused its discretion in awarding petitioner \$2,500 per month in permanent maintenance. In light of the record before us, the award seems fair and reasonable.

¶ 23

II. MARITAL ASSETS

¶ 24 The second issue raised by petitioner is whether the trial court erred in dividing marital assets. Petitioner argues the trial court failed to divide the marital assets in an equitable manner. She asks that the case be reversed and the cause remanded for a trial and a more equitable division of the parties' assets. We are unconvinced by petitioner's arguments with regard to the trial court's division of marital assets.

¶ 25 Section 503(d) of the Act requires a trial court to proportionally divide marital property after considering the relevant factors. 750 ILCS 5/503(d) (West 2010). Section 503(d) sets forth 12 factors which the trial court should consider in making its determination. Proportional asset division does not require equal division. *In re Marriage of Doty*, 255 Ill. App. 3d 1087, 1097-98, 629 N.E.2d 679, 686 (1994). On appeal, we will not reverse the trial court's division of property unless we conclude the trial court abused its discretion. *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 500, 588 N.E.2d 321, 324 (1992). An abuse of discretion only occurs if the record shows the trial court acted arbitrarily without employing conscientious judgment, or, if in view of all circumstances of the case, the trial court exceeded the bounds of reason so that no reasonable person would take the trial court's view. *Marriage of Siddens*, 225 Ill. App. 3d at 500, 588 N.E.2d at 324.

¶ 26 After careful consideration, we cannot say the trial court abused its discretion in dividing the marital assets. The trial court awarded respondent the marital home, along with its corresponding \$84,265 in mortgage debt and the costs associated with the

property, including property taxes. The trial court ordered respondent to pay petitioner 55% of the equity in the marital home, amounting to \$131,450, and 55% of the equity in his retirement accounts. We also point out that petitioner leaves the marriage debt-free and was found not to have dissipated \$28,000 in marital assets as respondent alleged. Petitioner took that amount of money out of the parties' joint accounts to use for living expenses during their separation.

¶ 27 While petitioner asserts she needs new furniture and appliances, the record reflects she was awarded the following household items: a living room couch and recliner, a billiard/ping pong table, curio cabinets, various tables, chairs, and entertainment centers, all household appliances, and all remaining household items not identified by the parties. Additionally, petitioner was awarded the antique glass collection valued at \$30,000, despite respondent's contention that the glass collection should be sold and the profits distributed equally between the parties. Under these circumstances, we cannot say the trial court abused its discretion in dividing the marital assets.

¶ 28

III. ATTORNEY FEES

¶ 29 The final issue raised in this appeal is whether the trial court abused its discretion in failing to require respondent to pay all of petitioner's attorney fees and costs. Petitioner argues the trial court should have ordered respondent to pay all of her attorney fees and costs. Respondent replies the trial court did not abuse its discretion in ordering him to pay only a portion of petitioner's attorney fees. We agree with respondent.

¶ 30 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 fees where one party lacks the financial resources and the other party has the ability to pay. 750 ILCS 5/508(a) (West 2010). The party seeking an award of attorney fees must establish his or her inability to pay and the other spouse's ability to do so. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174, 824 N.E.2d 177, 190 (2005). Financial inability exists if requiring payment of fees would strip a party of his or her means of support or undermine his or her financial stability. *Marriage of Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190. A trial court's decision to award or deny attorney fees is reviewed using an abuse of discretion standard. *Marriage of Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190.

¶ 31 In the instant case, the trial court ordered respondent to pay his own attorney fees and to contribute \$6,000 toward the \$12,092.51 in attorney fees and costs incurred by petitioner. Accordingly, respondent was ordered to pay almost 50% of petitioner's attorney fees and costs. Given the division of marital assets, the permanent award of maintenance, and the fact that petitioner has a job, it appears that petitioner has the ability to pay half of her own attorney fees. Under these circumstances, we cannot say the trial court abused its discretion in awarding her \$6,000 in attorney fees, rather than the full amount.

¶ 32

CONCLUSION

¶ 33 Our review of the record shows that neither party received everything they wanted as part of the dissolution proceedings. Overall, the trial court's order is thoughtful and well reasoned, and we cannot say the trial court abused its discretion in the award of maintenance, the division of marital assets, or the award of attorney fees.

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 35 Affirmed.