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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the
TIMOTHY HOFFMEISTER,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant,	)	
	)	No. 13 D 1322
v.	)	
	)	Honorable
LYNN HOFFMEISTER,	)	Celia Gamrath,
	)	Judge, presiding.
Respondent-Appellee.	)	

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JUSTICE COBBS delivered the judgment of the court.

Justices Howse and Ellis concurred in the judgment.

**ORDER**

¶ 1       *Held:* Trial court did not abuse its discretion when it awarded the respondent maintenance and approximately 65% of the marital assets, or when it ordered petitioner to contribute to respondent's attorney's fees. Trial court had jurisdiction to order petitioner to contribute to the educational expenses of his adult son and did not abuse its discretion in so ordering.

¶ 2       On March 4, 2015, the trial court dissolved the marriage of petitioner, Timothy Hoffmeister ("Tim"), and respondent, Lynn Hoffmeister ("Lynn"). Tim appeals from the judgment of dissolution. Specifically, he contends that the trial court erred in: (1) awarding Lynn maintenance; (2) awarding her a disproportionate share of the marital estate; (3)

ordering him to contribute towards Lynn's attorney's fees; and (4) ordering him to contribute to his adult son's college tuition. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4

The parties were married in Cook County on December 12, 1998. Tim adopted Lynn's son Jason, born February 4, 1995, and the parties' daughter Haley was born on January 6, 2001. The parties separated in September 2012 and Tim filed a petition for dissolution of marriage against Lynn on February 15, 2013. In the petition, Tim asked the court, *inter alia*, to divide the marital property, assign joint custody of Haley, and "[f]or any other relief this Court shall deem equitable and just." On March 11, 2013, Lynn filed an answer in which she requested that the court equitably distribute marital property, award her maintenance, order Tim to pay her legal fees, order him to pay child support, and "[g]rant such other relief as it deems appropriate and equitable." The pleading did not explicitly refer to Jason's college expenses.

¶ 5

At the time of the dissolution, Tim was 40 years old and worked as a sales manager for a heating and cooling company. He earned between \$90,000 and \$100,000 annually, including quarterly commissions, and his employment provided health insurance and retirement benefits. He testified that, in prior years, he had earned up to \$140,000 a year in sales positions. Prior to entering sales, Tim had worked at a HVAC business in which the parties owned a half-interest.

¶ 6

Lynn was 38 years old and unemployed at the time of the dissolution. She was receiving weekly unemployment benefits of \$444 that would continue for an extendable 26 weeks. She testified that she was a high-school graduate, but had no further education or training. For the first nine years of the marriage, Lynn was a homemaker and occasionally helped with the

HVAC business. She went in approximately once a week to do payroll, pay bills, and complete other tasks for the company. After the parties sold their interest in the company, Lynn worked part-time as a school cafeteria worker and later as a secretary. After the parties separated, Lynn began to work full-time as a personal assistant to a physician, earning a \$40,000 annual salary. However, during the dissolution proceedings, Lynn's employment was terminated.

¶ 7 She testified that following the parties' separation she began a relationship with an individual and became pregnant during the dissolution proceedings. Following the child's birth, Lynn took unpaid family leave from work and, after discussions with the doctor for whom she worked, planned to return to work at the end of October 2013. However, on October 7, 2013, a human resources representative called her and stated that if she did not return to work on the following day, she would be fired. Lynn then spoke with the doctor and he assured her that she could remain on leave. She later met with the doctor and a representative from the human resources department. They informed her that they "were doing cutbacks" and that she no longer had a position because she had not gone to work on October 8.

¶ 8 Both parties testified that Tim and Jason ceased to have any relationship following the separation. Lynn testified that Jason began attending Lewis University during the separation. She also testified that Tim never asked for information regarding Jason's college choices, indicated that he would not contribute, and stopped talking to her. Consequently, she did not ask him to help with college expenses.

¶ 9 Both parties testified that they lived comfortably during the marriage in a 5,500 square foot home. They took yearly vacations to Wisconsin and mainly relied on Tim's income.

Following the separation, the parties sold their marital home. Lynn and the parties' children moved in with Lynn's mother and reduced expenses dramatically. Lynn began paying for braces for Haley, as well as Jason's college tuition. Tim purchased a residence in Plainfield, Illinois, with a stipulated value of \$12,027. He subsequently rented out the home and began renting another dwelling for himself and his girlfriend. He used marital funds to purchase a new truck and the parties stipulated that he dissipated \$3,537 of marital funds over the course of several vacations. Tim also testified that he was able to continue setting aside funds for retirement and health savings plan.

¶ 10 The parties stipulated to marital assets including an annuity; a 401(k) plan; two SEP IRAs, each holding \$2,000; \$8,617 held in escrow from the sale of the marital home; a \$9,639 tax refund; the \$12,000 Plainfield residence; and a \$10,666 credit card debt. The parties also entered a joint parenting agreement regarding Haley which set forth joint-custody and agreed to monthly child support payments of \$980.80.

¶ 11 On March 4, 2015, the trial court entered a written judgment for dissolution of marriage. The trial court noted that it found Lynn to be "absolutely credible," and that she had relied in good faith on her employer's assurances when she did not return to work in the beginning of October 2013. It noted that she had actively searched for jobs since her termination. After considering the factors set forth in subsection 504(a) of the Illinois Marriage and Dissolution Act ("Act") (750 ILCS 5/504(a) (West 2014)), the court ordered Tim to pay reviewable maintenance in the amount of \$1,200 per month for 18 months. In regard to the marital assets, the trial court stated that it had considered the factors contained in subsection 503(d) of the Act (750 ILCS 5/503(d) (West 2014)) and awarded Lynn: 65% of the marital portion of the annuity and the 401(k); both SEP IRAs; the \$8,617 held in escrow; and the \$9,639 tax

refund. Tim received the Plainfield residence and was charged with \$3,537 in dissipation. The court assigned 65% of the credit card debt to Tim and the remaining 35% to Lynn. It reasoned that Lynn had lived frugally and attempted to diminish the marital debt during the separation, whereas Tim had made no efforts to do so despite having access to the bulk of the marital income.

¶ 12 The court next found that Lynn was unable to pay her remaining attorney's fees, because doing so would "severely undermine her financial stability." It found that the fees charged were reasonable and that Tim was capable of paying them. It ordered Tim to pay \$3,500 in contribution to Lynn's attorneys.

¶ 13 Finally, the court ordered that each of the parties would be responsible for one-third of Jason's college expenses, with Jason responsible for the remainder. It noted that Tim's claim that he was unaware of Jason's college plans was "disingenuous" because Tim had indicated he wanted nothing to do with Jason and would not contribute. Tim appeals.

¶ 14 ANALYSIS

¶ 15 Maintenance

¶ 16 Tim first contends that the trial court erred in awarding Lynn spousal support. He argues that her relationship with another man after the parties' separation and her new child are factors that weigh against an award of maintenance because they are voluntary choices that have detrimentally affected her earning capacity and needs. Lynn responds that the trial court properly weighed all necessary factors and did not abuse its discretion in awarding maintenance.

¶ 17 Maintenance awards fall within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173

(2005). The question, therefore, is "whether any reasonable person could have taken the position adopted by the trial court." *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708 (2006). As the appellant, Tim bears the burden of establishing that the trial court abused its discretion. *Schneider*, 214 Ill. 2d at 173.

¶ 18

The trial court may only award maintenance where a spouse (1) lacks the ability to provide for his or her reasonable needs and (2) is unable to support his or herself through suitable employment or other income. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 651 (1993). The trial court must consider several statutory factors when determining an award of maintenance: "(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."

750 ILCS 5/504(a) (West 2014). The trial court need not give equal weight to each factor so long as it balances the factors reasonably. *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790 (2003).

¶ 19 In determining that maintenance was appropriate, the trial court explicitly stated that it was considering the statutory factors set forth in subsection 504(a) of the Act. At the time of the dissolution, Tim demonstrated a far greater earning capacity with an income of \$90,000 to \$100,000, and previous years of employment earning up to \$140,000. Lynn, by contrast, was unemployed and unsuccessful in her efforts to find new employment. Moreover, her lack of education and training seriously call into doubt her ability to find future earnings comparable to Tim's, especially where her highest paid previous position was \$40,000. The court's findings are also supported by the length of the marriage and the standard of life established. For much of the 16-year-long marriage, Lynn remained at home and raised the couple's two children, occasionally helping out with the parties' HVAC business. Both parties testified that they enjoyed a comfortable standard of living during the marriage. The record established that Tim has readily sustained that standard of living, buying a house, a new vehicle, and taking multiple vacations following the separation. By contrast, Lynn's standard of living was greatly reduced, and she and the children moved into her mother's home. Taking all the evidence into account, we cannot find that the trial court abused its discretion in determining that maintenance was appropriate.

¶ 20 Tim argues that Lynn's relationship and new child should be viewed as factors that weigh against maintenance because they caused her to lose her job as a personal assistant. We note that the trial court explicitly found Lynn to be credible and noted that she had acted in good faith reliance on her employer's assurances that she was allowed to take additional time off

from work. A trial court's findings of fact regarding maintenance awards will not be disregarded unless they are against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010). We decline to weigh Lynn's unemployment against her where the trial court determined that her unemployment was involuntary and that finding is supported by the record.

¶ 21 Tim also argues that Lynn's needs and her ability to find employment are "intricately intertwined" with the needs of her new child. He asserts that the child negatively affects most of the statutory factors. There is nothing in the record to indicate that the trial court improperly considered the needs of Lynn's extramarital child in determining that maintenance was appropriate. While it is clear that the child will present additional obligations and challenges in Lynn's life, these extra responsibilities do not invalidate Lynn's other needs and the factors properly considered by the trial court.

¶ 22 Division of Marital Property and Debt

¶ 23 Defendant next contends that the trial court erred in awarding Lynn approximately 65% of the marital estate. He again argues that Lynn's child negatively impacts her ability to earn income and that she should not benefit from both a disproportionate share of the marital estate and maintenance. Lynn responds that the division was equitable given the totality of the circumstances.

¶ 24 The primary concern in the division of marital property is whether a distribution is equitable, and therefore "each case rests on its own facts." *In re Marriage of Jones*, 187 Ill. App. 3d 206, 222 (1989). An apportionment need not be an equal division. *Id.* A trial court's apportionment of marital property will not be reversed unless it constitutes an abuse of discretion. *Id.*



¶ 25 Pursuant to section 503(d) of the Act, the trial court shall divide marital property in just proportions considering all relevant factors, including: each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including the contribution of a spouse as a homemaker or to the family unit; the dissipation by each party of the marital or non-marital property; the value of the property assigned to each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; the custodial provisions for any children; whether the apportionment is in lieu of or in addition to maintenance; and the reasonable opportunity of each spouse for future acquisition of capital assets and income. See 750 ILCS 5/503(d) (West 2014).

¶ 26 Here the trial court considered the relevant factors, including but not limited to: the 16-year length of the marriage; Lynn's "diligent contribution to the preservation of the marital estate and conservation of funds" during the separation compared to Tim's stipulated dissipation; Lynn's contributions as a homemaker; her role as primary caregiver to Jason and Haley; her work in the marital business; and Tim's ability to earn a high income and set aside money for retirement compared to Lynn's inferior economic resources. Viewing these factors and the totality of the circumstances, we cannot say that the trial court abused its discretion in awarding Lynn a larger share of the marital estate.

¶ 27 We find Tim's arguments regarding Lynn's child equally unpersuasive in the context of the allocation of marital property. There is nothing in the record to suggest that the trial court's determination was improperly influenced by the needs of the child and any additional obligations the child presents for Lynn do not render the court's determination an abuse of discretion.

¶ 28 Tim argues that it is improper for the trial court to award a larger share of the marital property to Lynn on top of maintenance; however, he does not cite to any authority that stands for the proposition that a court is barred from making such an award. Rather, so long as the trial court properly considers all the relevant factors as laid out in section 503(d), the trial court has broad discretion in applying these factors and is authorized to award either property or maintenance, both property and maintenance, or property in lieu of maintenance. *Jones*, 187 Ill. App. 3d at 223.

¶ 29 Contribution to Lynn's Attorney's Fees

¶ 30 Tim next contends that the trial court abused its discretion in ordering him to contribute to Lynn's attorney's fees. He argues that Lynn failed to show that she was unable to pay her own fees, particularly where she received approximately 65% of the marital property as well as maintenance.

¶ 31 The trial court's award of attorney's fees in a dissolution proceeding will not be overturned unless the court abused its discretion. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656 (2007). Typically, attorney fees are the responsibility of the party who incurred the fees. *Berger v. Berger*, 357 Ill. App. 3d 651, 662 (2005). Section 508 of the Act, however, allows for contribution to attorney fees "where one party lacks the financial resources and the other party has the ability to pay." *Schneider*, 214 Ill. 2d at 174; see also 750 ILCS 5/508 (West 2014). The party requesting fees must show that he or she is unable to pay and the other party is capable. See *In re Marriage of Minear*, 181 Ill. 2d 552, 562 (1998) ("The propriety of an award of attorney fees is dependent upon a showing by the party seeking them of an inability to pay and a demonstration of the ability of the other spouse to do so.") (quoting *In re Marriage of Bussey*, 108 Ill. 2d 286, 299-300 (1985)). In determining whether

an award of contribution is reasonable, the trial court must consider the criteria set forth in section 503 of the Act, governing the division of marital property, and in section 504, governing the award of maintenance. *Nesbitt*, 377 Ill. App. 3d at 658.

¶ 32 As previously discussed, the factors relevant to the division of marital property and an award of maintenance support the trial court's findings that Lynn has significant financial need and that Tim's earning capacity is far superior to Lynn's. Accordingly, the trial court did not abuse its discretion in determining that Lynn was unable to pay her attorney's fees, finding Tim was able to do so, and consequently ordering Tim to contribute to those fees.

¶ 33 Tim argues that Lynn's share of the marital estate and the award of maintenance payments render her capable of paying her fees. The award of both maintenance and a larger share of the marital estate to a party do not foreclose the trial court from also finding the award of attorney's fees appropriate. See *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214-15 (2009) (finding award of wife's attorney's fees was not an abuse of discretion where wife was also awarded maintenance and a larger portion of the marital property). Although the awards did provide Lynn with some funds, she was not required to demonstrate that she was completely destitute. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 631 (2000). It was enough to show that her attorney's fees would "undermine [her] economic stability." *Id.* Given the evidence before the trial court, we cannot find that its order that Tim contribute to Lynn's attorney fees was an abuse of discretion.

¶ 34 Jason's College Expenses

¶ 35 Tim finally argues that the trial court did not have subject-matter jurisdiction to consider Jason's college expenses because Lynn did not include the expenses in any pleading, citing *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994). He argues alternatively that the trial

court abused its discretion in ordering him to contribute to Jason's college expenses because their relationship has deteriorated and he was not involved in the application process.

¶ 36 The circuit courts have "original jurisdiction of all justiciable matters," with limited exceptions. Ill. Const. 1970, art. VI, § 9. A justiciable matter involves a controversy that is "definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). In order for a circuit court to exercise its jurisdiction and thereby answer a justiciable question, a party must invoke that jurisdiction "through the filing of a complaint or petition." *Ligon*, 264 Ill. App. 3d at 707. A court exceeds its jurisdiction where it *sua sponte* adjudicates an issue that was not presented through proper pleadings. *Id.*

¶ 37 In *Ligon*, the plaintiff filed a petition requesting that the court find a parent-child relationship between the defendant and the plaintiff's child, and that the defendant pay child support. *Id.* At 702. When the plaintiff failed to appear for a hearing on these issues, the court awarded custody of the child to the defendant. *Id.* at 703. In reviewing the trial court's custody decision, this court held that the trial court lacked subject-matter jurisdiction to grant custody to the defendant because plaintiff filed no petition requesting such relief. *Id.* at 707-08. Although the court had the power to grant custody generally, it did not have jurisdiction to grant relief not requested in the petition before it. *Id.*

¶ 38 We find *Ligon* to be inapposite. In the present case, both parties requested various forms of relief from the court regarding the dissolution of their marriage. Lynn specifically requested child support, without limiting that request to Haley. Courts construe an award of educational expenses as a form of child support. *In re Marriage of Chee*, 2011 IL App (1st)

102797, ¶ 8. Furthermore, the prayer for relief in Lynn's answer requests "such other relief [the trial court] deems appropriate and equitable." Tim's petition similarly requests "any other relief this Court shall deem equitable and just." Under the present circumstances, we find that the question of Jason's college expenses is also sufficiently raised by both parties' request for "other relief." We acknowledge that the broad reference to "other relief" in both pleadings cannot be read without limitation. Such a general phrase could not be stretched to bring issues wholly unrelated or tangential to the dissolution of the parties' marriage under the umbrella of the trial court's jurisdiction. Here, however, the issue of Jason's college expenses is intricately related and interwoven with the questions more explicitly put before the trial court. In seeking the dissolution of their marriage, the parties asked the court to consider and assign the property, debts, and responsibilities included in that relationship. Those responsibilities include the question of Jason's college expenses. As such, the trial court had jurisdiction to resolve the issue. Moreover, we note that the facts of the present case are entirely distinguishable from *Ligon*. Here, both parties were present in court and represented by counsel, both presented testimony regarding the issue, and both fully argued the question before the trial court.

¶ 39 Having determined that the trial court had jurisdiction to consider Jason's college expenses, we turn to the merits of its decision. Generally, the Act does not require parents to continue making child support payments after the child has reached majority. *In re Marriage of Truhlar*, 404 Ill. App. 3d 176, 180 (2010). However, a trial court may order one or both parents to pay non-minor child support for educational expenses for college or professional training. 750 ILCS 5/513(a)(2) (West 2014). The award of educational expenses for an adult child is not mandatory. *In re the Support of Pearson*, 111 Ill. 2d 545, 551 (1986). In making

such an award, the court must consider all relevant factors, including: (1) the financial resources of both parents; (2) the standard of living the child would have enjoyed had the marriage continued; (3) the child's financial resources; and (4) the child's academic performance. 750 ILCS 5/513(b) (West 2014). The trial court may also consider the strength of the parent-child relationship in considering whether to require contribution. *Gibb v. Triezenberg*, 188 Ill. App. 3d 695, 701 (1989). Such an award is reviewed for an abuse of discretion. *In re Marriage of Cianchetti*, 351 Ill. App. 3d 832, 837 (2004).

¶ 40 Tim argues that the trial court abused its discretion in ordering him to contribute to Jason's education expenses because he and Jason no longer have a father-son relationship and because he was uninformed and uninvolved in Jason's selection of and attendance at Lewis University. Notably, Tim does not argue that the trial court failed to consider these factors. It is clear from the record the court explicitly considered both. In its order, the court found that Tim was at least partially at fault for these factors noting that "Tim indicated he wanted nothing to do with Jason" and had made clear that any attempts to seek contribution would be futile. Lynn testified that Jason was attending Lewis University on a scholarship that covered most of his tuition. He was also working part time to cover his expenses. We have already discussed the evidence of the financial needs and resources of both parties. We cannot find that the trial court abused its discretion in ordering both parties to pay one-third of Jason's tuition.

¶ 41 Conclusion

¶ 42 For the foregoing reasons, we find that the trial court did not abuse its discretion in awarding Lynn maintenance, awarding her approximately 65% of the marital estate, and ordering Tim to contribute to her attorney's fees. We also find that the trial court had

No. 15-0966

jurisdiction to consider the educational expenses of the parties' adult son and did not abuse its discretion in ordering each parent to contribute one-third of his tuition. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 43 Affirmed.