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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
BONNIE TRIA-ROY,)	of Kane County.
)	
Petitioner and Counterrespondent-)	
Appellee,)	
)	
and)	No. 08-D-400
)	
CHARLES ROY,)	
)	Honorable
Respondent and Counterpetitioner-)	David P. Kliment,
Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in its initial review of maintenance: its judgment for dissolution of marriage limited the scope of the initial review (though not a subsequent review) to whether petitioner had taken steps to obtain employment and become self-supporting, and thus the court erred in considering additional factors; we vacated the court's rulings on the initial review and remanded for reconsideration.

¶ 2 At issue in this post-dissolution-of-marriage case is whether the order awarding maintenance to petitioner, Bonnie Tria-Roy, limited the scope of review of the award, and, if so, whether the trial court, in modifying maintenance, exceeded the scope of that review. For the

reasons that follow, we determine that the scope of review was limited and that the trial court exceeded that scope when it modified the maintenance award. Accordingly, we vacate the modified maintenance award and remand this cause for a new hearing on petitioner's petition for a review of maintenance.

¶ 3 Petitioner and respondent, Charles Roy, were married for almost 21 years. During that time, the parties' fraternal twins were born. Although petitioner continued to work for a short time after the parties' children were born, she quit when raising a family and having a successful career proved to be unfeasible. When the twins were 10 years old, petitioner petitioned to dissolve the marriage.¹ Three years later, the court entered a judgment of dissolution for marriage. In that order, the court awarded petitioner maintenance. The entire maintenance provision provided:

“1. The [respondent's] right to receive maintenance from the [petitioner] is hereby barred.

2. The Court finds that an award of reviewable maintenance for the [petitioner] is appropriate. After consideration of the factors in Section 504 of the Illinois Marriage and Dissolution of Marriage Act [(Act) (750 ILCS 5/504 (West 2014))²], and based upon the

¹ Thereafter, respondent filed a counterpetition, petitioner dismissed her petition, and the parties proceeded on respondent's counterpetition.

² Throughout this disposition, we refer to both sections 504 and 510 of the Act (750 ILCS 5/504, 510 (West 2014)). In doing so, we note that these provisions were modified by Public Act 99-90, § 5-15 (eff. Jan. 1, 2016), after this appeal was filed but before either party had filed a brief. Because the parties' arguments are framed solely in terms of the law that was in effect at the time of the trial court's ruling and the new provisions would not alter our decision here, we,

[petitioner's] reasonable monthly expenses and the amount of child support awarded which will contribute to some of the household expenses, the Court orders the [respondent] to pay the sum of \$3,500.00 per month to the [petitioner] as and for reviewable maintenance for a period of twenty four (24) months, subject to the terms of review set forth herein.

3. The [petitioner] shall have an affirmative duty to seek and accept appropriate employment and it is appropriate that the [petitioner] be obligated to attempt to be fully self-supporting. The Court will consider a review of the maintenance award stated herein upon the filing of a petition for review by the [petitioner] prior to the expiration of the second year of maintenance. A subsequent review of maintenance shall be pursuant to Section 504 of the *** Act [(750 ILCS 5/504 (West 2014))] and shall not require a showing of a substantial change in circumstances. The maintenance obligation shall continue during any period of review. The [petitioner's] right to receive maintenance shall be terminated as set forth in Section 510(c) of the *** Act [(750 ILCS 5/510(c) (West 2014))]. Maintenance may be modified in accordance with the showing of a substantial change in circumstances.”

Neither party ever challenged the maintenance provision of the judgment for dissolution of marriage.

¶ 4 Within two years after the order was entered, petitioner filed a concise petition to review maintenance. In her petition, she simply noted that the 24 months of court-ordered maintenance would be expiring soon and that she was entitled to a review of maintenance. Petitioner asked

like the parties, cite the old version of the law.

the court to establish respondent's future maintenance "in accordance with the terms of [s]ection 504 and 510 of the *** Act [(750 ILCS 5/504, 510 (West 2014)).]"

¶ 5 After a hearing, the court modified petitioner's monthly maintenance award to \$2,333 from June 1, 2014, to May 31, 2015, and \$1,166 from June 1, 2015, to May 31, 2016. After May 31, 2016, respondent's maintenance obligation would cease. The court modified petitioner's maintenance award after considering several things. For example, the court's order provided that "[r]egarding [the] section 504[] factors that were considered by the trial judge when setting the original maintenance award of \$3,500 per month, this Court has considered each of those factors and has considered each of those factors in making the determination in this case." Moreover, pursuant to sections 510(a-5)(1) and (2) of the Act (750 ILCS 5/510(a-5)(1), (2) (West 2014)), the court found that, although "[petitioner] made some effort to become employed, [she made] no effort to become self-supporting." Further, the court considered, pursuant to section 510(a-5)(5) of the Act (750 ILCS 5/510(a-5)(5) (West 2014)), that "[m]aintenance has been paid in this case for in excess of two (2) years, not long given the duration of the marriage, which was twenty-one (21) years." However, the court observed that "the trial judge, who heard and considered extensive testimony at the trial, found that 24-months of maintenance [w]as appropriate given the information available at the time of trial." Finally, the court considered, pursuant to section 510(a-5)(6) of the Act (750 ILCS 5/510(a-5)(6) (West 2014)), that "[p]etitioner received a significant amount of property pursuant to [the dissolution] judgment."³

³ After delineating all of the above and before imposing the new maintenance terms, the court again asserted, "[b]ased on the above, *** Petitioner did not make an effort to become self-supporting."

¶ 6 Thereafter, petitioner moved the court to reconsider. The court granted the motion and modified the maintenance award previously ordered. Specifically, after the court indicated that it “ha[d] considered each of the appropriate statutory provisions related to maintenance review,” the court’s order provided:

“The Motion to Reconsider *** is granted. The Court has again considered each of the factors set forth in the [order reducing the maintenance award], has again reviewed [the] Judgment for Dissolution of Marriage, which placed an affirmative obligation on the [p]etitioner to seek and accept appropriate employment, as well as the arguments of counsel and the evidence adduced at the hearing which resulted in the [order reducing the maintenance award]. *** [A] marriage of 24 [sic] years is a lengthy one, and when a high income earning spouse leaves his or her profession to raise the children, it is unrealistic to expect him or her to reenter the workforce at anywhere near the income level he or she had when leaving the workforce. The Court is also cognizant of the fact that the [r]espondent’s child support obligation will end in the near future, and that his income is sufficient to meet his current support obligations. Therefore, the maintenance award of \$3500 stands, subject to review as provided for by statute.”

¶ 7 This timely appeal followed.⁴

⁴ When respondent originally appealed, this court dismissed the appeal, as other matters remained pending and no finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) was entered. See *In re Marriage of Tria-Roy*, 2015 IL App (2d) 150149-U (summary order). Since then, the trial court supplemented the order granting the motion to reconsider to include a proper Rule 304(a) finding.

¶ 8 In this appeal, we are asked to consider whether (1) the maintenance provision of the judgment for dissolution of marriage limited the scope of review of the maintenance award, and, if so, whether (2) the trial court exceeded the scope of that limited review. More specifically, respondent claims that, when petitioner moved to reconsider the maintenance award, the court should have considered only whether petitioner had sought and accepted appropriate employment and attempted to become self-supporting (see 750 ILCS 5/510(a-5)(1), (2) (West 2014)). Because, as respondent claims, the court considered factors other than these, he contends that the order granting petitioner’s motion to reconsider should “be reversed and/or vacated and that the Court’s opinion and order [reducing the initial maintenance award] be reinstated.”

¶ 9 The first issue we address is whether the maintenance provision in the judgment for dissolution of marriage limited the scope of a subsequent review of the maintenance award to whether petitioner had accepted appropriate employment and attempted to become self-supporting. Resolving that issue begins by examining the maintenance provision of the judgment for dissolution of marriage. Interpreting the provisions of a judgment dissolving a marriage are governed by the same rules that apply in construing a contract. *In re Marriage of Kekstadt*, 85 Ill. App. 3d 952, 954 (1980). The main objective in construing the judgment is to ascertain and give effect to the court’s intent. *Id.* In doing so, we generally are limited to considering the language in the court’s order. *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28. If the language is clear and unambiguous, it must be applied without resorting to any aids of construction. See *id.* Our review of a court’s order is *de novo*. See *In re Marriage of Benson*, 2015 IL App (4th) 140682, ¶ 22.

¶ 10 Here, although the parties disagree on the meaning of the court’s order, we believe that the order is not ambiguous. See *Kekstadt*, 85 Ill. App. 3d at 955 (mere fact that parties do not

agree on the meaning of an order's terms does not render the order ambiguous). Accordingly, we will construe the judgment in light of its language.

¶ 11 In doing so, we first consider the type of maintenance the court ordered. Section 504(a) of the Act (750 ILCS 5/504(a) (West 2014)) allows a trial court to “grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just.” In setting the amount and duration of a maintenance award, the court is to consider several factors delineated in section 504 of the Act. See 750 ILCS 5/504(a) (West 2014). One type of maintenance that may be awarded pursuant to section 504 of the Act is rehabilitative maintenance. See *Heasley*, 2014 IL App (2d) 130937, ¶23. “ ‘Rehabilitative maintenance is appropriate if evidence shows a potential for future employability at an income that allows approximately the same standard of living established during the marriage.’ ” *Id.* (quoting *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 340 (1999)). “ ‘Inherent in the concept of rehabilitative maintenance is the optimal goal that after a period of renewing or developing skills, or reentering the job market, the dependent former spouse will be able to become self-sufficient through his or her own income.’ ” *Id.* (quoting *In re Marriage of Lenkner*, 241 Ill. App. 3d 15, 20 (1993)).

¶ 12 When a trial court sets a maintenance award, it need not affirmatively state whether the award is for rehabilitative maintenance. See *Blum v. Koster*, 235 Ill. 2d 21, 35 (2009) (parties' agreement construed as providing for rehabilitative maintenance). Rather, such a determination may be made after reviewing the order awarding maintenance. See *id.*

¶ 13 We believe that the court's order here provided for rehabilitative maintenance. A review of the order reveals that the court wanted petitioner to attain appropriate employment and become self-sufficient, and it believed that petitioner could do so within 24 months after the

order was entered. Accordingly, the court set petitioner's maintenance award at \$3,500 a month for two years.

¶ 14 Having concluded that the court's order provided for rehabilitative maintenance, we next address whether that maintenance award was subject to review or modification. Review and modification proceedings are separate and distinct mechanisms that allow a court to reconsider a maintenance award. *In re Marriage of Golden*, 358 Ill. App. 3d 464, 469 (2005). "[M]odification proceedings can be initiated by the parties without prior order of the court." *Id.* In contrast, review proceedings can arise only when the court's order setting maintenance specifically provides for it. *Id.* This does not mean that a review will take place without either one of the parties moving for a review. *Id.* at 470. However, a party may so move only during the period of time set in the order. See *id.* at 466 (marital settlement agreement provided for reviewable maintenance when it stated "[m]aintenance shall be non-modifiable for three years and may only be reviewed no sooner than thirty-six (36) months after the first payment"); see also *Heasley*, 2014 IL App (2d) 130937, ¶¶ 4, 29 (review proceeding appropriate where trial court's order provided that "[m]aintenance is reviewable upon petition of either party on or after 24 months of maintenance payments").

¶ 15 Here, we determine that the court's order provided for a review of maintenance. Not only did the court's order indicate twice that it was awarding petitioner "reviewable maintenance," but the order also provided, similar to *Heasley* and *Golden*, that, before two years had passed, petitioner could seek review of the maintenance award by filing a petition for review. Additionally, we note that providing for a review of maintenance is entirely consistent with an award of rehabilitative maintenance. Indeed, a common consideration for review of

maintenance is the dependent spouse's efforts to become financially independent. *Heasley*, 2014 IL App (2d) 130937, ¶ 27.

¶ 16 Determining that the court's order provided for a review within two years after the order was entered is important for several reasons. For example, in review proceedings, unlike in modification proceedings, the moving party does not need to establish a substantial change in circumstances. *Id.* ¶ 26. Rather, in review proceedings, the court considers the relevant factors and determines how, if at all, the maintenance award should be altered. See *Blum*, 235 Ill. 2d at 36. Moreover, when a review of maintenance is ordered, the court can limit what may be considered at the subsequent review. *Heasley*, 2014 IL App (2d) 130937, ¶ 27. As with a general review of maintenance, a court can, following a limited review, keep maintenance the same, increase it, decrease it, terminate it, or change the terms of payment. See *Golden*, 358 Ill. App. 3d at 471.⁵

¶ 17 Here, we believe that the court limited what could be considered at the review proceedings. That is, the court's order provided that petitioner shall receive rehabilitative maintenance for two years. The judgment then indicated that maintenance is reviewable "subject to the terms of review set forth herein." In the very next sentence, the judgment provided that, during the two years that respondent is paying petitioner maintenance, petitioner shall seek and accept appropriate employment and attempt to become self-sufficient. Before that two years expires, petitioner may petition the court to review the maintenance award.

⁵ We see no reason why the outcomes following a general review of maintenance should be any different in a limited review of maintenance, unless, of course, the limited review specifically provides for limited outcomes.

¶ 18 From this language, it is clear that the sole issue to be considered at this initial review proceeding was whether petitioner accepted appropriate employment and attempted to become self-sufficient. Indeed, if that were not the sole issue to be considered, then we fail to see why the court would have provided that only petitioner could petition for a review of the maintenance award within two years after the judgment dissolving the parties' marriage was entered. That is, if any and all of the factors delineated in section 510(a-5) of the Act could be considered, it would have made sense that both parties could petition to review maintenance, as many of the factors apply to both of them. See, *e.g.*, 750 ILCS 5/510(a-5)(1), (3), (4), (7), (8) (West 2014) (providing that maintenance may be modified or terminated based on, among other things, change in employment status, impairment of present and future earning capacity, tax consequences of maintenance payments, increase or decrease in income, and property acquired and owned after judgment of dissolution for marriage). By contrast, if review was limited to whether petitioner had taken steps to become employed and self-sufficient, only petitioner would be aware of her progress toward that goal.

¶ 19 In reaching the conclusion that the court's order provided for a limited review of rehabilitative maintenance, we are in no way suggesting that a subsequent review of maintenance is likewise limited to a consideration of whether petitioner has become suitably employed and self-sufficient.⁶ Because this appeal concerns the initial review, *i.e.*, one within two years after the dissolution order was entered, we limit our decision here to the first portion of paragraph three of the maintenance provision. At this point, any construction of the remainder of the maintenance provision is unnecessary.

⁶ Indeed, the order provided that “[a] *subsequent* review of maintenance shall be pursuant to [S]ection 504 of the *** Act.” (Emphasis added.)

¶ 20 We next consider whether the trial court exceeded the scope of that review when it modified the maintenance award. The decision to modify maintenance is within the trial court's sound discretion, and we will not disturb the trial court's modification of maintenance absent an abuse of that discretion. *Heasley*, 2014 IL App (2d) 130937, ¶ 31. A trial court abuses its discretion when it fails to recognize the limited scope of its review of maintenance and modifies maintenance based on factors outside of that limited scope. See *id.*

¶ 21 Here, it is clear that the trial court, in both the original order modifying maintenance and the order granting the motion to reconsider, considered factors other than whether petitioner had accepted appropriate employment and attempted to become self-sufficient. For example, at the hearing on petitioner's petition to review maintenance, the court reassessed all of the section 504 factors (750 ILCS 5/504 (West 2014)), considered the duration of the maintenance payments in light of the length of the marriage (750 ILCS 5/510(a-5)(5) (West 2014)), and looked at the amount of property petitioner was given when the marriage was dissolved (750 ILCS 5/510(a-5)(6) (West 2014)). At the hearing on the motion to reconsider, the court reassessed all of those factors again and considered the facts that the parties were married for a long time, that respondent's child-support obligation was ending soon, and that his current income could easily satisfy a monthly maintenance obligation of \$3,500. See 750 ILCS 5/510(a-5)(9) (West 2014). Because the court exceeded the scope of that limited review of maintenance, we must, in contrast to what respondent asks us to do, vacate both of those orders and remand this matter for the court to conduct a review consistent with the maintenance provision of the judgment dissolving the parties' marriage.

¶ 22 For these reasons, the judgment of the circuit court of Kane County is vacated, and the cause is remanded for a new initial limited review hearing on petitioner's petition to review maintenance.

¶ 23 Vacated and remanded with directions.