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2016 IL App (3d) 150716-U

Order filed July 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
DEANNA SOLIS-CANTRILL,	)	Rock Island County, Illinois,
	)	
Petitioner-Appellant,	)	
	)	Appeal No. 3-15-0716
and	)	Circuit No. 14-D-51
	)	
DEAN CANTRILL,	)	Honorable
	)	Mark A. Vandeweile,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: An Illinois trial court has the authority to order a couple, as a part of the dissolution order, to file a joint federal tax return. The trial court did not overstep its authority in requiring husband and wife to file a joint tax return for the monetary benefit of the marital estate, and the court did not abuse its discretion in ordering wife to pay 10% of the tax liability.

¶ 2 Deanna Solis-Cantrill filed for divorce from Dean Cantrill in February of 2014. On May 30, 2014, husband liquidated $260,000 from the couple's IRA account to complete the purchase of a new home for him and his paramour. Wife filed an amended notice of intent to

claim dissipation, which emphasized the significant tax penalties as a result of husband's withdrawal from the couple's IRA account. As part of the final order providing for the division of marital assets and debts, the trial court ordered the couple to file a joint tax return for tax year 2014 and assigned wife 10% of the 2014 tax liability. Wife appeals. We affirm.

¶ 3 BACKGROUND

¶ 4 On April 26, 1986, Deanna Solis-Cantrill (wife) and Dean Cantrill (husband) were married in Moline, Illinois. The couple has two adult children. Wife was a stay-at-home mother during the marriage. In a statement from the Social Security Administration, dated January 16, 2015, wife accrued $30,023 in social security eligible earnings since 1979. Both husband and wife agreed that the marriage began to break down in late 2013.

¶ 5 On February 7, 2014, wife filed the petition for dissolution of marriage. The court entered a temporary order on November 5, 2014, mandating husband pay wife $1,650 per week in temporary maintenance and spousal support, to begin on July 25, 2014.

¶ 6 In 2014, husband's gross pay was $243,886.11. Husband also received annual bonuses and a company car as a part of his compensation.

¶ 7 On October 6, 2014, wife filed a notice of intent to claim dissipation based on husband's expenditure of marital funds for the purchase of airline tickets, meals, and gifts for his paramour. On March 25, 2015, wife filed an IX(b) financial disclosure statement that included her only source of income, $7,095 per month in temporary maintenance.

¶ 8 On March 27, 2015, husband filed an amended financial disclosure statement, which documented that his gross income was $23,733 per month. This statement revealed the Fidelity

Rollover IRA account (IRA account[1]) balance was "$127,166 reduced to pay balance of current home," and documented $172,881 as an "Estimated 2014 Fed/St" tax payment debt.

¶ 9 On March 27, 2015, wife filed an amended notice of intent to claim dissipation, alleging husband continued to make "expenditures of marital funds for purposes unrelated to the marriage," specifically, by withdrawing $260,000 from the couple's IRA account on May 30, 2014, to purchase a home to share with his paramour after the petition for dissolution was filed on February 7, 2014. Wife alleged that "[e]arly withdrawal of said funds triggered significant taxes and penalties, which would have otherwise not have been incurred by the parties."

¶ 10 On March 30, 2015, the trial court conducted a hearing on the petition for dissolution. The court received testimony from an appraiser, Jean McFedries, regarding the value of marital assets.

¶ 11 At the time of hearing, on March 30, 2015, husband was employed as vice-president and general manager of Cobham Mission Systems in Davenport, Iowa. Husband testified that in his mind, the marriage was over in October 2013, when he left St. Petersburg, Florida and moved to Davenport, Iowa. Husband discussed his earnings and compensation, as well as his previous jobs.

¶ 12 Husband testified that he purchased a Bettendorf home after the petition for dissolution was filed. According to Petitioner's exhibit No. 7, the contract price for the Bettendorf home was $283,000. According to husband, he paid $17,059.68 to Gomez Trust Title Company on June 6, 2014. In order to pay the balance of the purchase price, husband withdrew $260,000 from the IRA account, as evidenced in Petitioner's exhibit No. 9. According to husband, wife would not sign a document that was necessary for him to finance the new home by mortgage.

[1]Throughout the record, the Fidelity account is referred to as an IRA and as a 401(k) account. Petitioner's exhibit No. 9 in the record reveals this Fidelity account's type as an "IRA Rollover" account. For clarity and purposes of this order, we will refer to this account in question as the IRA account.

¶ 13 Husband also testified that he sold the couple's 1979 Porsche 930 Turbo for $29,500 and, after paying off the loan, received $22,710 for the couple's 2011 Porsche Cayman S. Husband used approximately $7,000 of the joint funds to "pay the initial amount of debt towards the IRS for the 2013 taxes." Husband also used approximately $850 to pay for a CPA for the 2013 tax preparation and to reimburse a renter in Waco, Texas. Husband stated that he "used marital assets to pay some marital debt." Husband also detailed the cost of his children's education.

¶ 14 Wife testified that she was a stay-at-home mother. She confirmed that she was looking for a 50-50 split of the outstanding marital bills. Wife testified about the trips she and husband took, as well as her role and responsibilities in caring for the children and household during the marriage. Wife testified that she had recently enrolled in classes at Blackhawk College to earn a degree as a physical therapy assistant. During her testimony, wife stated that she did not want to file jointly with husband because she did not "feel that [she] should be liable for him withdrawing from the IRA and be penalized for the penalty."

¶ 15 During his testimony, husband explained the federal 2014 taxes would be $140,881 based on a joint federal tax return and $155,982 if the parties filed separately. Husband also explained the state and federal tax consequences resulting from his withdrawal of funds from the IRA account. Following the conclusion of the hearing, the court took the matter under advisement.

¶ 16 On April 22, 2015, the court issued an order regarding the contested financial issues. The court found that husband did not dissipate marital assets by paying rent in Texas or when husband traveled and incurred business expenses. However, the trial court found husband did dissipate marital assets when husband "liquidated $260,000 from his 401(k)[2] without approval

[2]The record reflects that husband withdrew $260,000 from the couple's IRA account, however, the trial court, in its April 22, 2015, opinion on second half issues, refers to this account as the "401(k)" and "IRA."

by either [wife] or the court and this was a factor in the final property distribution; as a result [husband] was assigned 90% of the 2014 income tax debt."

¶ 17 With respect to marital assets and debt, the trial court summarized the award as follows:

"a. [Husband] was assigned 74% of the debt ($282,613.56) and awarded 57% ($338,474.43) of the marital assets resulting in net assets of 26.3% ($55,861.87). [Husband] will need to liquidate or borrow against the assets to satisfy the debt.

b. [Wife] was assigned 26% of the debt ($99,199.00) and 43% ($255,574.43) of the marital assets resulting in net assets of 73.7% ($156,376.43)."

The trial court assigned the 2014 tax liability as 90% to husband and 10% to wife "because of the IRA dissipation." Further, wife was granted an $80,000 lien against husband's new Bettendorf home to be paid by July 15, 2015. In exchange, wife shall release the lien and "quit claim any interest she has in the residence." Wife's portion of the 2014 taxes she was responsible for was to be deducted from the $80,000 cash payment for the house.

¶ 18 Concerning the division of marital assets and debts, the trial court ordered wife to receive 83% of marital personal property and husband to receive 17%. The court ordered husband to pay 73% of the outstanding student loan debt, and wife to pay 27% of the student loan debt. Further, the court ordered that "[t]he parties shall file their income taxes married filing joint," because "filing joint maximizes the benefit to the marital estate."

¶ 19 Husband was ordered to continue to academically support daughter while she remained in good standing, with a B average, in college. Husband was also ordered to cover wife and daughter's health insurance, for a specified time.

¶ 20 The court determined that wife's maintenance, set at approximately 30% of husband's income was appropriate and she would continue to receive $1,650 per week. While the parties

agreed to divide husband's 2014 net bonus, for 2015 and subsequent years, wife would receive 30% of husband's gross bonus. Finally, husband was ordered to name wife as beneficiary for 50% of the life insurance policy he received as a benefit of his employment with Cobham. The trial court ordered each party to pay their own attorney's fees. Maintenance review was set for May 2018. The judgment of dissolution of marriage was entered on July 31, 2015.

¶ 21 On August 24, 2015, wife filed a motion to reconsider the court's ruling compelling the parties to file a joint 2014 tax return. A hearing on wife's motion to reconsider was held on September 18, 2015. The court denied the motion on October 7, 2015. On October 13, 2015, wife filed a timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 On appeal, wife challenges two aspects of the court's comprehensive order dividing the marital assets and liabilities. The only provisions of the trial court's order challenged by wife on appeal relate to the trial court's decision concerning the 2014 tax return and the apportionment of tax consequences for the last year of the couple's marriage.

¶ 24 First, wife claims the trial court lacks legal authority to compel the couple to file a joint 2014 tax return, absent an agreement from the parties. Second, wife claims the trial court erred by ordering wife to pay 10% of any tax liability when a considerable portion of the tax liability was the direct result of the husband's dissipation of marital assets.

¶ 25 Husband submits the trial court has the legal authority and discretion, in some cases, to order divorcing couples to file a joint tax return. Further, husband submits the trial court properly assigned 10% of the tax liability to wife as part of an equitable distribution of marital debt.

¶ 26 Under section 503 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503 (West 2014)), the trial court has the power to divide marital property, including marital debts and assets, in a marriage dissolution. This division must be made in "just proportions considering all relevant factors," including "the tax consequences of the property division upon the respective economic circumstances of the parties." *Id.* Case law establishes that an equitable division need not be an equal division of the marital assets and debts. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 213 (2009).

¶ 27 The parties are in agreement with respect to the standard of review pertaining to the court's authority to compel the joint filing of the 2014 tax return. The parties agree this issue involves a question of law for our *de novo* review. See *In re Marriage of Crook*, 211 Ill. 2d 437, 442 (2004); See *In re Marriage of Skinner*, 149 Ill. App. 3d 788, 791 (1986).

¶ 28 At the onset, we address husband's contention that the issue related to the joint tax return is now moot because the parties have already executed the joint 2014 tax return.[3] Illinois courts will "consider an otherwise moot issue when a recognized exception to the mootness doctrine applies," such as the public interest exception. *In re Jessica H.*, 2014 IL App (4th) 130399, ¶ 19 (citing *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009)). There are three elements to establish the public interest exception. *Id.* First, "the question presented must be one of a public nature." *Id.* Second, "there must a reasonable need for an authoritative determination for the future guidance of public officers." *Id.* Third, "there must be a likelihood of future recurrence of the question." *Id.* This first issue on appeal presents a public issue that is likely to arise in other cases and should not evade our review.

[3]"You can change your filing status from a separate return to a joint return by filing an amended return using Form 1040X," however, "[o]nce you file a joint return, you cannot choose to file separate returns for that year after the due date of the return." I.R.S. Publication #17, pg 23 (2014).

¶ 29 For purposes of this appeal, wife submits a state court cannot require any person to file a joint federal tax return. 26 U.S.C. § 6013 (2003). Wife cites a District of Columbia Court of Appeals case, *Leftwich*, which holds, that while the trial court should consider many factors in making a distribution of marital property, including tax matters, the trial court's ability to consider tax matters does not "serve as a license for the trial court to compel a party to execute a joint return." *Leftwich v. Leftwich*, 442 A. 2d 139, 144 (D.C. 1982).

¶ 30 Wife also relies on the analysis from the Nebraska Supreme Court, that holds "[b]ecause a trial court can equitably adjust its division of the marital estate to account for a spouse's unreasonable refusal to file a joint return, resort to a coercive remedy that carries potential liability is unnecessary" and unpredictable. *Bock v. Dalbey*, 283 Neb. 994, 1004 (2012). Thus, the Nebraska Supreme Court held that the trial court does not have the discretion to order parties to file a joint tax return. *Id.*

¶ 31 In contrast, husband cites a New Jersey Appellate Court decision, *Bursztyn*, in which the court's authority to compel wife and husband to file a joint federal tax return was questioned. *Bursztyn v. Bursztyn*, 379 N.J. Super. 385 (N.J. 2005). In its 2005 ruling, the court found that there was no controlling New Jersey precedent for guidance and recognized other states were split on the issue. *Id.* at 395-96. The court found that the trial court has discretionary authority to compel parties to file joint federal and state income tax returns based on the facts presented in a given case. *Id.* at 398. Further, the court acknowledged that the trial court should consider less intrusive options for "remedying any perceived disadvantage to filing separate income tax returns." *Id.* at 397.

¶ 32 There is no Illinois case directly on point. However, an Illinois reviewing court concluded "no abuse of discretion" occurred when the trial court compelled a divorcing couple to

file a joint income tax return and noted "it is accepted that generally married parties do better under the tax code when they file jointly rather than separately." *In re Marriage of Zummo*, 167 Ill. App. 3d 566, 577 (1988). However, in that case, the parties did not directly challenge the trial court's authority to order a joint tax return.

¶ 33 After carefully reviewing the case law submitted by the parties, we observe at least one trial court has found it necessary to compel a couple to file a joint federal tax return and we suspect this issue arises with regularity in acrimonious dissolution cases where the parties are unable to reach an agreement on many financial issues. See *Zummo*, 167 Ill. App. 3d at 577 (1988). Subsequently, we hold that a trial court in this state has the legal authority to exercise its discretion by ordering parties to file a joint tax return as part of a comprehensive approach to settle financial issues a couple is unable to resolve by agreement. Nonetheless, as a general rule, trial courts should use this authority sparingly in the absence of an agreement by the parties. While it is preferable to have the parties agree on these issues, sometimes an agreement, especially regarding financial considerations with tax consequences, is impossible to facilitate. This is such a case.

¶ 34 Here, in its sound analysis and extensive order, the court seemed well aware that husband withdrew funds from a marital account to purchase a new home, against wife's wishes, just months after wife filed for dissolution of the marriage. It is clear from the record that wife was unaware of or did not approve of the withdrawal of funds from a marital IRA account. In addition, the trial court astutely noted that guidance from the court was not requested before husband used marital funds to purchase the Bettendorf home before the marriage was dissolved.

¶ 35 Here, the record reveals the parties had always elected to file a joint return during the course of the marriage. Further, the court's decision to compel a joint tax return was one

component of an overall, well-balanced resolution of many financial issues the couple was unable to resolve by agreement during an acrimonious dissolution process. Based on this record, we conclude the trial court properly exercised its discretion to order husband and wife to file a joint tax return for the 2014 tax year. By ordering the couple's joint filing, as part of a comprehensive plan to fairly divide debts and assets, we conclude the trial court did not abuse its discretion in so doing.

¶ 36 The second issue presented on appeal is a review of the trial court's order requiring wife to pay 10% of the 2014 tax liability. For a review of the division of marital assets and debts, we will not disturb the holding on appeal unless the trial court abused its discretion. *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071 (2005) (citing *Crook*, 211 Ill. 2d at 453 (2004)). A trial court abuses its discretion " 'where no reasonable person would take the view adopted by the trial court.' " *Awan*, 388 Ill. App. 3d at 207 (2009) (quoting *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 37 The case law provides that, in instances where dissipation has occurred, the trial court's seemingly disproportionate division of the marital assets and debts to account for one party's dissipation is not an abuse of the trial court's discretion. *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 887-88 (1987). In its order, the trial court gave the reason of "the IRA dissipation" for apportioning 90% of the tax penalty assigned to husband and only 10% assigned to wife. Further, husband testified that wife did not sign a document enabling husband to purchase the Bettendorf home subject to a mortgage, without liquidating $260,000 from the IRA account. Husband testified that he had many discussions with wife about needing her to sign this document. Wife did not provide any testimony regarding this fact. Consequently, based on this

record, there is some evidence to support the trial court's reasoning for apportioning the tax penalties based on a 90/10 ratio.

¶ 38 Given the circumstances before the trial court, including the significant assets and $80,000 lien upon husband's new Bettendorf home awarded to wife, we conclude that the trial court did not abuse its discretion in ordering wife to pay 10% of the 2014 tax liability.

¶ 39 CONCLUSION

¶ 40 The judgment of the circuit court of Rock Island County is affirmed.

¶ 41 Affirmed.