

NOTICE

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2016 IL App (4th) 150335-U

NO. 4-15-0335

FILED

September 1, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: THE MARRIAGE OF TRACI L. SOMERS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Sangamon County
PATRICK J. SOMERS,)	No. 11D916
Respondent-Appellant.)	
)	Honorable
)	Matthew J. Maurer,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that (1) the trial court did not abuse its discretion by (a) awarding petitioner \$10,500 monthly in permanent maintenance, (b) awarding petitioner \$15,000 toward her attorney fees, and (c) allocating 50.05% of the marital estate to petitioner; and (2) the court's finding that respondent dissipated \$228,823 of marital funds was not against the manifest weight of the evidence.

¶ 2 In April 2015, the trial court dissolved the marriage of petitioner, Traci L. Somers, and respondent, Patrick J. Somers. As to ancillary issues, the court (1) ordered Patrick to pay Traci permanent maintenance of \$10,500 per month, (2) ordered Patrick to pay \$15,000 of Traci's attorney fees, (3) found Patrick had dissipated \$228,823 of marital funds, and (4) awarded Traci 50.05% of the marital estate.

¶ 3 Patrick appeals, arguing that (1) the trial court abused its discretion by (a) ordering him to pay Traci an "excessive" amount of permanent maintenance, (b) ordering him to pay Traci's attorney fees, and (c) distributing the marital property in a nonequitable manner; and (2) the court's finding that he dissipated marital funds is against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 Patrick and Traci were married in March 1982. The couple had two children, Philip and Benjamin, both of whom are now adults. In November 2011, Traci filed her petition for dissolution of marriage. At that time, she was 52 years old and Patrick was 54.

¶ 6 A. The Court's Temporary Order

¶ 7 In November 2011, Traci filed a petition for temporary relief, requesting (1) temporary, exclusive possession of the marital residence located in Cantrall, Illinois (Cantrall residence), and (2) maintenance. Patrick and Traci both filed financial affidavits that showed Patrick's income was \$188,560 per year and Traci's income was approximately \$2,000 per year. On July 29, 2013, the court entered an order that granted Traci temporary possession of the Cantrall residence, ordered Patrick to continue paying expenses for the Cantrall residence and the marital vehicles, and awarded Traci \$3,000 per month in temporary maintenance.

¶ 8 B. The January 2015 Hearing

¶ 9 The following evidence was presented at the January 2015 hearing.

¶ 10 Patrick is the president of Pacific Management, Inc., a property management company. He has worked for Pacific Management since 1981 and has held a variety of positions, such as property manager, asset manager, and vice president. Patrick has been the

president of Pacific Management for 10 years. Patrick is also the president of Business Cleaning Corporation, a janitorial company that cleans properties. He is on the board of directors for a number of companies and has served on the Sangamon County Board of Review (property tax disputes) for the past five years. Patrick has property interests in various partnerships. Through Pacific Management, Patrick receives a health-care contribution, life insurance, a car allowance, mileage reimbursement, a cell phone, an apartment in Chicago (including utilities and parking), a 401(k) contribution, and a monthly reimbursement check for meals and expenses. In 2014, Patrick earned \$303,745 in salary, bonuses, and board of director fees. Patrick expects his income to increase annually.

¶ 11 Patrick experienced heart attacks in 2006 and 2012 but reported no other health concerns. Since the parties' separation, Patrick has lived a lavish lifestyle. He frequents high-end restaurants and retail stores. Patrick has also taken vacations with his girlfriend and paid for their vacation expenses. Patrick estimated he spent less than \$1,000 on gifts for his girlfriend. Patrick pays for dance lessons for himself and his girlfriend. Since the parties separated, there have been numerous cash withdrawals and cashing of large checks by Patrick on the parties' bank accounts. When asked about the specifics of each transaction, Patrick stated that he did not know. Patrick also purchased a home in Springfield for \$74,000 (Springfield residence) and a 2015 Mini Cooper for \$34,000.

¶ 12 Traci has a high school diploma and credits toward an associate of arts degree. Traci has held part-time employment positions in the past and her compensation was never more than minimum wage. Patrick provided all of the household income. Throughout the parties' marriage, Traci primarily cared for the parties' two children. She would shop for the children

and take them to their doctor's appointments. Traci also assisted Patrick with his work and entertained his business guests. She would often spend time with Patrick at his apartment in Chicago. During the course of their marriage, Traci shopped without limitation and enjoyed a luxurious lifestyle. Traci and Patrick would often dine at high-end restaurants. The parties also traveled extensively, taking at least three vacations a year.

¶ 13 Traci's lifestyle has drastically changed since the separation. She is no longer financially able to shop at stores she used to frequent, maintain personal grooming, take vacations, make charitable donations, shop, or dine at high-end restaurants. She currently works at Southern Illinois University as a simulated patient for student examination, which is her most recent employment in the past 15 years. Traci's income is approximately \$2,000 annually. Traci's health is generally good but she is in need of dental care. She drives a 2004 BMW with over 170,000 miles and has a 2005 PT Cruiser that is unreliable. She continues to reside in the Cantrall residence.

¶ 14 C. The Trial Court's Memorandum Opinion and April 2015 Order

¶ 15 Following the January 2015 hearing, the trial court issued a memorandum opinion, allocating 50.05% of the marital estate to Traci and 49.95% to Patrick. The marital property was valued at \$1,181,804. The court's division distributed the majority of financial assets equally between the parties, which included awarding Traci (1) the Cantrall residence and Patrick the Springfield residence, (2) her future interest in Patrick's 401(k), (3) the 2004 BMW and 2005 PT cruiser and Patrick the 2015 Mini Cooper, and (4) a one-half ownership interest in each of Patrick's seven partnerships. The court ordered Traci to be named the sole beneficiary on Patrick's \$100,000 life insurance policy, as long as he is obligated to pay maintenance. In

dividing the marital property, the court considered that the parties were married for 33 years, Patrick had significant income, Traci had an extremely minimal income, the parties' ages, and the parties' ability for future acquisition of income.

¶ 16 In dividing the parties' financial assets, the trial court charged \$228,823 against Patrick's share of the marital estate for dissipation of marital funds. The court found "[Patrick] committed dissipation and that his actions were so selfish[,] excessive and improper as to constitute an outright waste of marital funds." The court further noted Patrick failed to present evidence regarding how marital funds were spent and, specifically, failed to account for large sums of cash that he received from cashed checks.

¶ 17 The trial court also ordered Patrick to pay Traci (1) \$10,500 in permanent maintenance per month and (2) \$15,000 for her attorney fees. In awarding maintenance, the court considered many factors, including (1) the present income of each party; (2) Patrick's ability to provide for his needs and Traci's inability to provide for her needs; (3) the parties' present and future earning capacity; (4) Traci's impairment of earning capacity due to devoting time to domestic duties; (5) the time required for Traci to acquire appropriate education, training, and employment; (6) the standard of living established during the marriage; (7) the parties' 33 years of marriage; (8) the ages and health of each party; (9) tax consequences; and (10) contributions and services provided by Traci to assist Patrick's business. The court also found its order for attorney fees to be reasonable under the circumstances.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Patrick appeals, arguing that (1) the trial court abused its discretion by (a)

ordering him to pay Traci an "excessive" amount of permanent maintenance, (b) ordering him to pay Traci's attorney fees, and (c) distributing the marital property in a nonequitable manner; and (2) the court's finding that he dissipated marital funds is against the manifest weight of the evidence. We address Patrick's contentions in turn.

¶ 21 A. Maintenance

¶ 22 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) provides, in pertinent part, that "the [trial] court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time." 750 ILCS 5/504(a) (West 2010). "A trial court's determination as to the awarding of maintenance is presumed to be correct." *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 34, 961 N.E.2d 980. The amount of a maintenance award lies within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010). "An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court." *Id.* The party seeking reversal of a maintenance award bears the burden of showing that the trial court abused its discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005).

¶ 23 Patrick argues that the trial court abused its discretion in ordering him to pay a "substantial award of maintenance" to Traci. Without citing any authority, Patrick claims the \$10,500 per month maintenance award was unwarranted because Traci received a large property award from the court.

¶ 24 Section 504(a) provides a list of 12 enumerated factors the court must consider

when it renders an award of maintenance. 750 ILCS 5/504(a)(1) to (12) (West 2010). Section 504(a)(1) of the Dissolution Act provides that a trial court must consider "marital property apportioned and non-marital property assigned to the party seeking maintenance." 750 ILCS 5/504(a)(1) (West 2010). However, the distribution of marital property is only one of the factors to be considered in an award of maintenance. *Id.*

¶ 25 In this case, the trial court received evidence regarding the parties' income and expenses. The court also heard extensive testimony about the standard of living the parties enjoyed during the course of the marriage and the contributions each party provided to the marriage. The court then issued a detailed written finding regarding the parties' history, income, assets, financial positions, and the standard of living established during the marriage, which are all statutory factors the court should consider under section 504(a) of the Act. 750 ILCS 5/504(a) (West 2010).

¶ 26 Patrick also argues Traci has an affirmative duty to seek and accept appropriate employment because she has marketable skills and is capable of contributing to her support. Although a party seeking maintenance has an affirmative duty to accept appropriate employment (*In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 87, 993 N.E.2d 1062), "appropriate employment" is relative to the other factors the trial court considered in awarding maintenance. When a trial court is considering maintenance, one party should not be allowed to continue a previous standard of living while the other party is forced to substantially reduce his or her standard of living. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 345, 672 N.E.2d 57, 62 (1996).

¶ 27 The record shows that at the time divorce proceedings began, both parties were in

their 50s. Throughout the parties' 33-year marriage, Traci worked intermittently at retail and miscellaneous jobs for minimum wage. Traci primarily maintained the marital home and cared for the parties' two children. Due to the significant income Patrick received from Pacific Management, the parties lived comfortably. As a result, Traci does not have the education, training, or employment history to obtain employment to support the lifestyle to which she was accustomed during the parties' marriage. Traci's employment as a simulated patient at a university, earning around \$2,000 annually, is the first job she has held within the past 15 years. Based on the record before us, it does not appear Traci has the means to earn the income to continue the standard of living she enjoyed during the parties' marriage. In conclusion, Patrick has failed to show the trial court abused its discretion by ordering him to pay Traci \$10,500 per month in permanent maintenance.

¶ 28 B. Attorney Fees

¶ 29 Patrick argues that the trial court abused its discretion by ordering him to pay \$15,000 of Traci's attorney fees because she received \$177,366 in cash assets and a \$10,500 monthly maintenance award. Patrick suggests the trial court improperly gave too much weight to Traci's current financial status without considering her ability to earn income. In response, Traci argues the attorney fee award is appropriate because after the division of marital property and the maintenance award, a gross disparity in income remains.

¶ 30 As a general rule, the party who incurred attorney fees has the responsibility to pay those fees. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 656, 879 N.E.2d 445, 452 (2007). However, section 508(a) of the Dissolution Act permits a trial court to "order any party to pay a reasonable amount for his own or the other party's costs or attorney's fees." 750 ILCS

5/508(a) (West 2010). An award of attorney fees pursuant to section 508(a) is to be made "in accordance with subsection (j) of [s]ection 503." 750 ILCS 5/508(a) (West 2010). Section 503(j)(2) provides that an attorney-fee award "shall be based on the criteria for division of marital property under this [s]ection 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under [s]ection 504." 750 ILCS 5/503(j)(2) (West 2010). In *In re Marriage of Haken*, 394 Ill. App. 3d 155, 161-62, 914 N.E.2d 739, 744-45 (2009), we clarified that a party seeking an attorney-fee award under section 508(a) need not show an inability to pay as a prerequisite to receiving a fee award. Instead, the court should consider all the criteria demanded by section 503(j)(2). We review a trial court's award of attorney fees for an abuse of discretion. *Haken*, 394 Ill. App. 3d 155, 160, 914 N.E.2d 739, 743 (2009).

¶ 31 In this case, the trial court was required to base its attorney-fee award on the criteria for division of marital property and the criteria for an award of maintenance. 750 ILCS 5/508(a), 503(j)(2) (West 2010). The record shows Traci incurred attorney fees of \$25,480. The court found an order requiring Patrick to pay \$15,000 of Traci's attorney fees to be reasonable and made the decision with consideration of the division of property and the maintenance award. We agree. After Patrick's monthly maintenance obligation, he has an annual income of approximately \$175,000, receives a varying amount for distributions from his partnership interests, and receives reimbursement for living expenses provided by his employer (approximately \$68,000). Traci's annual income from maintenance is \$126,000. Even though Traci received approximately \$177,366 in cash assets, the marital estate was divided 50.05% to Traci and 49.95% to Patrick. Traci is required to pay for her own health insurance and living expenses. She is in need of a new vehicle, property maintenance, and dental work and is still

required to pay \$10,480 of her attorney fees. Patrick will continue to grow his personal estate with his income (historically he earns \$20,000 more each year), and Traci will have the divided marital assets, her set amount of monthly maintenance, and income from an entry-level position. Consequently, Patrick has failed to show the trial court abused its discretion in ordering him to pay \$15,000 of Traci's attorney fees.

¶ 32 C. Allocation of Marital Estate

¶ 33 Patrick's challenge to the trial court's allocation of the marital estate proceeds in two distinct parts. Specifically, Patrick contends that the trial court erred by (1) failing to account for his contributions to the marriage and (2) awarding a one-half partnership interest to Traci in each of his seven partnerships.

¶ 34 Section 503(d) of the Dissolution Act requires the trial court divide marital property "in just proportions considering all relevant factors." 750 ILCS 5/503(d) (West 2010). Relevant factors for the court to consider includes the following:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate *** and (ii) the contribution of a spouse as a homemaker or to the family unit;

(2) the dissipation by each party of the marital or non-marital property;

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS

5/503(d)(1) to (12) (West 2010).

¶ 35 The trial court has broad discretion in distributing the marital estate. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042, 899 N.E.2d 1097, 1104 (2008). "In dividing

marital property, the distribution by the court need not be equal so long as it is equitable." *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1064, 838 N.E.2d 310, 315 (2005). A reviewing court will not reverse a trial court's division of marital property absent an abuse of discretion. *Id.*

¶ 36 As to his first challenge, Patrick claims that the trial court abused its discretion in awarding Traci 50.05% of the marital estate. Essentially, Patrick contends that the court gave more weight to factors that favored Traci and less weight to the factors that favored him. He notes that (1) he contributed more financially to the marriage, (2) he also helped raise the parties' two children, (3) Traci has the ability to earn her own income, and (4) he was ordered to pay a "significant" maintenance order.

¶ 37 The trial court found a near equal distribution of the marital property was appropriate and considered all factors, including the dissipation of property by Patrick, the significant duration of the marriage, Patrick's significant income and Traci's extremely low income, that both parties are in their mid-50s, and that Patrick has a far greater ability for future acquisition of assets and income and Traci's income in the future was "limited at best." Patrick does not challenge the court considered an improper factor, he only disputes the weight the court gave to each factor that was not to his benefit.

¶ 38 Additionally, Patrick asserts that the trial court improperly awarded Traci a one-half interest in each of his seven partnership interests because these partnerships are not marketable. He contends because he cannot sell his interest unless another partner wants to purchase it and he "has no control," and this division constitutes "an unnecessary continuing financial entanglement, which is discouraged by the [Dissolution Act]." In its written order, the court noted due to the unique nature of the partnership interests, a one-half equitable ownership

to Traci was the most appropriate manner to divide this asset. The partnerships generate income and pursuant to the court's order, Patrick is required to send Traci one-half of any payment he receives from these partnerships within seven days of receipt of payment. In the event the partnership interest is sold, Traci shall receive one-half of the sale proceeds. Patrick was also required to create a provision, by will or trust, to pass a one-half interest in the seven partnerships to Traci. As the partnership interests cannot be sold without a buyer and they regularly generate income, an equal division of the interest appears to be the only reasonable means to divide this marital asset.

¶ 39 We conclude that the court properly exercised its discretion in dividing the parties' marital estate.

¶ 40 D. Dissipation of Marital Property

¶ 41 When dividing marital property, the trial court is required to consider all relevant factors, including those provided in section 503(d) of the Dissolution Act (750 ILCS 5/503(d) (West 2010)). Among the factors listed is "the dissipation by each party of the marital or non-marital property" (750 ILCS 5/503(d)(2) (West 2010)). "Dissipation generally has been defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." *In re Marriage of D'Attomo*, 2012 IL App (1st) 111670, ¶ 36, 978 N.E.2d 277. The spouse charged with dissipation of marital property has the burden of showing, by clear and specific evidence, how the funds were spent. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 50, 974 N.E.2d 417. "Whether dissipation has occurred is a question of fact to be determined by the trial court, and such a determination will not be disturbed on appeal unless it is against the manifest

weight of the evidence." *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374, 899 N.E.2d 355 (2008). A finding is against the manifest weight of the evidence "when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *In re Marriage of Levinson*, 2012 IL App (1st) 112567, ¶ 33, 975 N.E.2d 270.

¶ 42 The trial court found that Patrick dissipated marital property by "spen[ding] considerable sums of money on a lavish lifestyle only he enjoyed after the parties separated" in the amount of \$228,823 and charged that amount against Patrick's share of the marital estate. Patrick argues this finding is against the manifest weight of the evidence because "he proved the funds expended for meals and entertainment in furtherance of his employment were reimbursed and his living expenses were not extravagant." Patrick emphasizes he was expected to "wine and dine" business associates and entertain them as part of his job duties. Patrick asserts his employer reimbursed him for these expenses and he would cash the reimbursement check to "use for other living expenses."

¶ 43 Patrick claims, without any citation to the record, "[he] had sufficient proof of why he withdrew the money and how he spent his money." The record indicates Patrick received reimbursement for his work expenses. However, the record is devoid of how these reimbursement checks and cash withdrawals were *specifically* spent, despite Patrick's assertion that he provided sufficient proof. When Patrick was asked about these funds during the January 2015 hearing, he replied that he did not know what the money was used for and generally claimed they were used for living expenses. "General and vague statements that funds were spent on marital expenses or to pay bills are inadequate to avoid a finding of dissipation." *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700, 843 N.E.2d 478, 483 (2006). As a result, the

court's finding that Patrick dissipated marital funds was not against the manifest weight of the evidence as he did not meet his burden of showing how the marital funds were specifically spent.

¶ 44

III. CONCLUSION

¶ 45 We commend the trial court judge for his patient and thorough consideration of the parties' positions and the clear and concise written order he filed in disposing of the issues in this case.

¶ 46 For the foregoing reasons, we affirm the trial court's judgment.

¶ 47 Affirmed.