2016 IL App (4th) 160287-U

NO. 4-16-0287

FILED
December 22, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
MATTHEW R. ROESCHLEY,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
and	)	No. 13D534
LINDSEY B. KARLS,	)	
Respondent-Appellant.	)	Honorable
	)	Arnold F. Blockman,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's maintenance award and final contribution of attorney fees and costs.

¶ 2 In September 2008, petitioner, Matthew R. Roeschley, and respondent, Lindsey B. Karls, were married. The parties did not have, nor did they adopt, any children. In November 2013, Matthew filed a petition for dissolution of marriage.

¶ 3 In March 2016, the trial court entered an order of dissolution of marriage and an accompanying opinion resolving all ancillary issues. The court ordered Matthew to pay Lindsey maintenance in the amount of $1,200 for 25 months, at which time a review hearing would be conducted to determine whether, and in what form, maintenance should continue. In addition, the court ordered Matthew to pay a portion of Lindsey's attorney fees.

¶ 4 Lindsey appeals, arguing that the trial court's maintenance and attorney fees determinations were improper. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Evidence

¶ 7 Matthew and Lindsey were married in September 2008. Matthew graduated from law school in 2006 and was practicing law at the time of the marriage, making $56,000 a year. In October 2009, Matthew was laid off and began working as a "contract attorney," where he earned between $34,000 and $37,000 a year. In December 2011, Matthew began working for the City of Champaign as an assistant city attorney, earning $81,000. In July 2014, he was promoted to deputy city manager. At the time of the petition for dissolution, Matthew was earning $120,000 a year.

¶ 8 Lindsey suffered from mental-health problems, including anxiety and depression, from the age of 12. She had been hospitalized several times for mental-health-related reasons and had been prescribed numerous medications. She graduated college in 2003 and law school in 2008. During law school, Lindsey dated Matthew but also suffered from severe bouts of depression, which required hospitalization. As a result of one of those hospitalizations and the accompanying treatment, Lindsey noticed an adverse effect on her memory and cognitive abilities, which affected her law school grades and employment prospects. After graduating from law school, Lindsey worked 10 to 15 hours a week as a researcher, making $14 an hour. That position lasted for nine months. Lindsey testified that she never took the bar exam because her anxiety made it too difficult to retain new information. For the remainder of the marriage, Lindsey worked part-time in hourly positions, where she was not paid more than $20 an hour.

¶ 9 The marriage produced no children. In February 2013, Matthew and Lindsey legally separated and have not lived together since. In November 2013, Matthew filed a petition for dissolution of marriage, citing irreconcilable differences. At the time Matthew filed his peti-

tion for dissolution, he was 36 years of age, and Lindsey was 32.

¶ 10 In February 2014, Lindsey filed a petition for temporary relief pursuant to sections 501 and 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501, 504 (West 2012)), arguing that she had insufficient income and assets to support herself during the dissolution proceedings. She requested the trial court to order Matthew to pay her maintenance during the proceedings in an amount sufficient for her to support herself and maintain the lifestyle she enjoyed during the marriage. Lindsey never called this petition to be heard by the court.

¶ 11 In August 2015, Lindsey filed a petition for contribution to final attorney fees. Later that month, the trial court conducted the first of five hearings on ancillary issues, with the final hearing occurring in November 2015.

¶ 12 B. The Trial Court's Order

¶ 13 In March 2016, the trial court entered a written judgment of dissolution of marriage, which included a memorandum opinion. In it, the court concluded that the recently enacted amendments to the maintenance statutes applied to this case. See 750 ILCS 5/504, 510 (West Supp. 2015) (amendments effective January 1, 2016).

¶ 14 In its written opinion, the trial court found that "[t]his is clearly a maintenance case," noting that Matthew earned roughly $120,000 a year as an assistant city manager, while Lindsey had "severe mental[-]health issues," was unemployed, received Social Security disability benefits, and survived financially only because she lived with her parents.

¶ 15 The trial court determined that under the new maintenance guidelines, Matthew should pay Lindsey maintenance in the amount of $1,729.53 a month. However, the court determined further that a downward deviation from the guidelines was appropriate in this case for the following reasons: (1) the marriage was "very short term," with the parties having lived together

for less than five years; (2) the standard of living during the marriage was "very basic"; (3) although Matthew was currently earning $120,718, the most he earned while the parties were living together was $81,000, and he was unemployed or underemployed for a period of time while the parties lived together; (4) the parties separated more than three years earlier, and since that time, Matthew voluntarily paid Lindsey's rent and utilities for six months, after which time he paid her $541.67 a month; and (5) at the time of dissolution, Matthew was living with another woman, who owned a home and earned approximately $60,000 a year. The court therefore deviated downward from the maintenance guidelines and ordered Matthew to pay Lindsey $1,200 a month in maintenance.

¶ 16 In addition, the trial court found that the maintenance guidelines provided for a maintenance term of 25 months. The court found further, however, that terminating maintenance at the end of the 25-month period would not be equitable. The court explained that the maintenance award in this case was essentially "rehabilitative maintenance," while noting that the maintenance statutes do not use that term and never have. The court explained that it would be purely speculative to predict Lindsey's mental-health situation and its effect on her ability to work 25 months in the future. Therefore, the court ordered a review hearing at the end of the 25-month maintenance period to determine whether maintenance should continue. The court ordered that at the hearing, Lindsey would bear the burden of "proving" that she had made a "good faith effort" to do the following during the 25-month period: (1) obtain full-time employment, (2) take her medications, and (3) continue receiving appropriate therapy.

¶ 17 The trial court explained that its maintenance award might seem excessive, given the short duration of the parties' marriage and Lindsey's possession of a law degree. However, the court explained that its award took into account Lindsey's "extremely serious mental illness

that inhibits her ability to work at the present time." In addition, the court considered that Matthew knew of Lindsey's mental-health issues and "voluntarily took on this obligation to [Lindsey] by marrying her." The court concluded, "His first obligation is to his soon to be ex-wife and not to his new girlfriend or infant child."

¶ 18 The trial court's order next addressed Lindsey's petition for contribution to final attorney fees. The court found that Lindsey had advanced $12,410 from the marital estate to pay attorney and witness fees and that Matthew had advanced $3,050. The court then used those figures to determine that Lindsey made an "overadvancement" of $9,360 ($12,410 less $3,050) from the marital estate, of which she was required to reimburse the estate $4,680. The court noted that the criteria for determining an award of attorney fees are the same as for determining a maintenance award and, therefore, "if there is a maintenance award, there should generally also be a final contribution [of attorney fees] award for all the reasons discussed by this court in its maintenance award determination."

¶ 19 The trial court found that Lindsey's total incurred attorney fees and costs of litigation totaled $33,695.50. The court found further that Matthew should pay 25% of Lindsey's attorney fees and costs, equaling $8,423.87. However, the court found that Matthew was entitled to a credit of $4,680 for the amount Lindsey overadvanced from the marital estate. Therefore, the court ordered Matthew to pay Lindsey $3,743.87 for attorney fees and court costs.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Lindsey raises two arguments on appeal: (1) the trial court's maintenance award was flawed for several reasons and (2) the court's award of attorney fees was insufficient.

¶ 23 A. Maintenance

¶ 24 Lindsey argues that the trial court's maintenance award was flawed on several grounds. We address those alleged grounds, in turn, after summarizing the law governing maintenance.

¶ 25 1. *Statutory Language and the Standard of Review*

¶ 26 Section 504(a) of the Act (750 ILCS 5/504(a) (West Supp. 2015)) provides that the trial court "may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just." In reaching a determination on maintenance, the court should first determine whether a maintenance award is appropriate at all, after considering "all relevant factors," including the 14 factors explicitly delineated by section 504(a) of the Act. *Id.*

¶ 27 If, after that evaluation, the trial court determines that a maintenance award is appropriate, the court "shall order maintenance" in accordance with either paragraph (b-1)(1) or paragraph (b-1)(2). 750 ILCS 5/504(b-1) (West Supp. 2015). Paragraph (b-1)(1) provides for maintenance "in accordance with guidelines." The guidelines provide a formula for determining both the amount and duration of maintenance. 750 ILCS 5/504(b-1)(1)(A), (B) (West Supp. 2015). The court shall order maintenance pursuant to the guidelines "unless the court makes a finding that the application of the guidelines would be inappropriate." 750 ILCS 5/504(b-1)(1) (West Supp. 2015).

¶ 28 If the court does make such a finding, it shall order maintenance "not in accordance with the guidelines," pursuant to paragraph (b-1)(2). 750 ILCS 5/504(b-1)(2) (West Supp. 2015). Under the non-guidelines approach to maintenance, the court should base its maintenance award on the factors enumerated in section 504(a). *Id*. If the court deviates from the maintenance guidelines, the court shall make specific findings of facts of the following: (1) the amount or du-

ration of maintenance that would have been required by the guidelines and (2) the reasoning for the court's variance from the guidelines. 750 ILCS 5/504(b-2)(2) (West Supp. 2015).

¶ 29 "[T]he propriety of a maintenance award is within the discretion of the trial court[,] and the court's decision will not be disturbed absent an abuse of discretion." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 30 *2. This Case*

¶ 31 a. Retroactive Maintenance

¶ 32 Lindsey argues that the trial court erred by denying her request to make the maintenance award retroactive to the date Matthew filed the petition for dissolution of marriage (November 2013) instead of ordering maintenance to begin in April 2016, as the court did. We reject Lindsey's argument.

¶ 33 Lindsey never made a written request for retroactive maintenance. Instead, the following exchange occurred at the September 2015 hearing on ancillary issues:

> "THE COURT: [I]s there a request for retroactive support?
>
> LINDSEY'S COUNSEL: Yes, yes."

¶ 34 At the November 2015 hearing on ancillary issues, the following exchange occurred when the trial court was inquiring about Lindsey's petition for *temporary* maintenance, which she never called for a hearing:

> "THE COURT: [H]ow come she waited the whole three-year period? I mean, she never asked for temporary maintenance.
>
> LINDSEY'S COUNSEL: Well, I tried to explain that to the court at the time is that she was not strong enough mentally to come in and do, do what it

took, get on the stand and testify. And I concurred with her thoughts on that because I could only get her on the stand one time and that's it. *** So the point is is [*sic*] I think that judgment is well-taken that she could not come in on a temporary relief. You have to make decisions. I made that decision based upon her condition. And, you, know, standing here today, I still think it's a correct decision. But if you noticed, for example—

THE COURT: I noticed you didn't ask for retroactive maintenance.

LINDSEY'S COUNSEL: Judge, I do want retroactive maintenance.

THE COURT: Well, you didn't—

LINDSEY'S COUNSEL: Okay.

THE COURT: You didn't ask for it, did you?

LINDSEY'S COUNSEL: Well, I'll ask for it right now. I wanted retroactive maintenance. I said that at the closing whenever we—

THE COURT: You did say that.

LINDSEY'S COUNSEL: I wanted retroactive.

THE COURT: I thought it was—

LINDSEY'S COUNSEL: Okay.

THE COURT: Was that a—just a slip then that you didn't ask for it?

LINDSEY'S COUNSEL: I guess you want me to say it was a slip, then, yes, it was a slip.

THE COURT: All right."

¶ 35 In its March 2016 written order, the trial court awarded Lindsey maintenance of $1,200 a month but did not address the issue of retroactive maintenance. Lindsey asks us to re-

verse the trial court's maintenance decision because it did not order retroactive maintenance.

¶ 36 It appears to us from the record that the trial court did not consider the issue of retroactive maintenance when reaching its decision on maintenance as a whole. The court's written order includes no discussion of retroactive maintenance. We surmise that the reason the court did not address maintenance is because Lindsey never filed a motion requesting retroactive maintenance. (For that matter, Lindsey never filed any written request for maintenance in this case.) Considering the caseload of the court, it is not surprising that Lindsey's oral requests for retroactive maintenance—which were made during the hearings on maintenance—went unaddressed by the court. As we have stated in a different context, "mere musings" made orally during a hearing are insufficient to raise an issue in the trial court. *Evans v. Brown*, 399 Ill. App. 3d 238, 251, 925 N.E.2d 1265, 1277 (2010). The better practice is to file an appropriate written motion raising the issue *in advance of the hearing*. *Id.*

¶ 37 Further, even were we to conclude that Lindsey sufficiently requested retroactive maintenance in the trial court, she failed to file a motion to reconsider the court's judgment, which did not grant or even address retroactive maintenance. Although a posttrial motion is not required in non-jury civil cases (see 735 ILCS 5/2-1203 (West 2014) ("In all cases tried without a jury, any party *may* *** file a [posttrial] motion***.") (Emphasis added.)), the lack of a posttrial motion is significant in this case because Lindsey never properly raised the issue of retroactive maintenance in the trial court in the first place. We will not reverse a trial court on an issue that was not properly presented to the court. Lindsey has therefore forfeited review of this issue on appeal.

¶ 38 In so concluding, we reiterate what this court recently wrote in *People v. Hillis*, 2016 IL App (4th) 150703, ¶ 107:

> "[T]he would-be appellant must make an adequate record while in the trial court. A party who would appeal must ensure the record is clear and ample enough to substantiate the claims of error he or she intends to raise in the appeal. [Citations.] Say, for example, that a party appeals an order of the trial court but because the order contains ambiguous language that the party never requested the trial court to clarify, we cannot tell if the order really is erroneous: that party, as the appellant, has failed to make a record adequate to support his or her contention of error, and the ambiguity will be resolved against the appellant."

¶ 39 b. Maintenance Subject to a Review Date

¶ 40 Lindsey next argues that the trial court's decision to order maintenance subject to a review date instead of permanent maintenance was against the manifest weight of the evidence. Alternatively, she argues that even if setting a review date was proper, the court's decision to set that date at 25 months was against the manifest weight of the evidence. Finally, Lindsey argues that the court's ordering Lindsey to prove certain conditions at the review hearing was against the manifest weight of the evidence. We disagree with all three of Lindsey's contentions.

¶ 41 Lindsey cites the wrong standard of review. She asserts that we should review the trial court's decision to determine whether it is against the manifest weight of the evidence. Not so. A trial court enjoys discretion when imposing a maintenance award. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189. As a result, we will not reverse a trial court's decision concerning maintenance unless no reasonable person would take the trial court's view. *Id.*

¶ 42 In support of her arguments on the issue of maintenance subject to a review date, Lindsey summarizes in detail several Illinois appellate court cases. However, Lindsey never explains specifically how the holdings of those cases apply to our review of the trial court's

maintenance award in this case. Instead, Lindsey summarizes those cases, summarizes again the facts of this case, and asserts that we should reverse the trial court. We decline to do so.

¶ 43 Lindsey also ignores the recent amendments to the maintenance statutes. Under the new amendments, the maintenance statutes provide guidelines to determine the duration of maintenance. See 750 ILCS 5/504(b-1)(1) (West Supp. 2015) (establishing the formulaic guidelines and mandating that the court use the guidelines "unless the court makes a finding that the application of the guidelines would be inappropriate"). The Act's guidelines provide the following formula for determining the duration of maintenance:

> "The duration of an award *** shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: 5 years or less (.20); more than 5 years but less than 10 years (.40); 10 years or more but less than 15 years (.60); or 15 years or more but less than 20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or maintenance for a period equal to the length of the marriage." 750 ILCS 504(b-1)(1)(B) (West Supp. 2015).

¶ 44 In this case, the trial court determined that the guidelines provided for a 25-month term of maintenance. Therefore, Lindsey's argument that "[p]ermanent maintenance should be the rule and not the exception when a former spouse is disabled" is contrary to the statutory language of the Act providing that the court utilize the guidelines to determine the duration of maintenance.

¶ 45 Lindsey argues that the 25-month period prior to review is too short and that the conditions the court ordered her to prove at the review are too onerous. First of all, the guidelines prescribed a 25-month maintenance period. Lindsey claims that she needs more than 25 months

to receive the therapy and counseling necessary so she can work full-time. Lindsey's arguments miss the mark. The trial court's order establishing a 25-month term did not mean that maintenance would terminate after 25 months. Instead, the court ordered that, for maintenance to continue beyond 25 months, Lindsey would have to show a "good-faith effort" to continue taking her medications and attend counseling.

¶ 46 Lindsey's argument that she could not fully recover in 25 months was therefore inapposite. The court was requiring her merely to make a good-faith effort to take her medication and attend counseling. The court's order did not mean that maintenance would be terminated at the end of 25 months unless Lindsey had fully recovered from her mental-health issues. Instead, the court was requiring her merely to make a "good-faith effort" toward rehabilitation. Contrary to Lindsey's claims, she had more than "little to no control" over whether she made *a good-faith effort* to address her mental-health difficulties.

¶ 47 We conclude that the trial court's decision as to maintenance was entirely reasonable. In its thoughtful written order, the court engaged in an extended, detailed description of its maintenance award and the reasoning it employed in determining that award. The court explained that the Act granted it the discretion to terminate maintenance at the end of the guideline-recommended 25-month period. However, because of the uncertainty about Lindsey's mental health 25 months in the future, the court determined that it was equitable to schedule a review hearing after 25 months, instead of ordering maintenance to terminate outright. The court's decision to abide by the guidelines as to duration but to schedule a review hearing at the end was a reasonable, commonsense use of the court's discretion. The conditions it imposed upon Lindsey were practical and will help to ensure that Lindsey does what she can to continue working toward improved mental health and stable employment. No part of the court's maintenance award

constituted an abuse of discretion.

¶ 48 c. The Trial Court's Downward Deviation from the New Maintenance Guidelines

¶ 49 Lindsey next argues that the trial court erred by deviating downward from the maintenance guidelines when the court should have deviated upward and awarded Lindsey $3,000 a month. We disagree.

¶ 50 Again, a trial court enjoys discretion when ordering maintenance. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189. In the written order of dissolution in this case, the court stated the amount of maintenance that would be required by the guidelines, along with its reasoning for varying from the guidelines' recommendation, as mandated by section 504(b-2)(2). 750 ILCS 5/504(b-2)(2) (West Supp. 2015). The court reasoned that this was a short-term marriage that was even shorter than it seemed because the parties legally separated and lived apart for some of the marriage. In addition, the court noted that the standard of living during the marriage was "very basic." The court explained further that Matthew had voluntarily helped to support Lindsey monetarily during the dissolution proceedings. As a result, the court deviated downward from the guidelines and awarded Lindsey $1,200 a month in maintenance. We conclude that the court sufficiently explained its reasoning for deviating and that its decision did not constitute an abuse of discretion. Lindsey has made no compelling argument to the contrary.

¶ 51 B. Attorney Fees

¶ 52 Lindsey argues that the trial court erred by ordering Matthew to pay only 25% of Lindsey's attorney fees when the court should have ordered Matthew to pay at least 75%. We disagree.

¶ 53 The allocation of attorney fees in a dissolution proceeding is governed by section 508 of the Act (750 ILCS 5/508 (West Supp. 2015)). Section 508(a) provides that court "may

order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West Supp. 2015). Attorney fees are appropriate when one party lacks financial resources and the other party has the ability to pay. *Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190. Section 508(a) goes on to provide that attorney fees shall be awarded in accordance with section 503(j) of the Act (750 ILCS 5/503(j) (West Supp. 2015)).

¶ 54 Section 503(j)(2) provides the following:

> "Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under section 504." 750 ILCS 5/503(j)(2) (West Supp. 2015).

¶ 55 Section 503(d) (750 ILCS 5/503(d) (West Supp. 2015)) lists the following factors to be considered by a court when dividing marital property (which section 503(j)(2) dictates should be considered when awarding attorney fees):

> (1) each party's contribution to the value of the marital estate;
>
> (2) the dissipation of marital property by the parties;
>
> (3) the value of the property assigned to each party;
>
> (4) the duration of the marriage;
>
> (5) the economic circumstances of each party;
>
> (6) any obligations and rights arising from a prior marriage of either party;
>
> (7) any prenuptial agreement;
>
> (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 of any children;

(10) whether maintenance was awarded;

(11) each party's opportunity for future acquisition of income and capital; and

(12) the tax consequences of the property division upon each party.

¶ 56 When maintenance is awarded, the court should also consider the following maintenance factors provided by section 504(a) (750 ILCS 5/504(a) (West Supp. 2015)) in determining the award of attorney fees:

(1) the income of each party, included marital property apportioned to each party;

(2) the needs of each party,

(3) the present and future earning capacity of each party;

(4) any impairment to earning capacity of the party seeking maintenance because he or she devoted time to domestic duties or forwent opportunities for education or training because of the marriage;

(5) any impairment to earning capacity of the party against whom maintenance is sought;

(6) the time necessary for the party seeking maintenance to acquire appropriate education, training, or employment;

(7) the standard of living established during the marriage;

(8) the duration of the marriage;

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

(10) all sources of income;

(11) the tax consequences of the property division upon each of the parties;

(12) contribution and services by the party seeking maintenance to the education,

training, or career of the other party;

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable.

¶ 57 A trial court's decision to award or deny attorney fees is reviewed for an abuse of discretion. *Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190.

¶ 58 In this case, as detailed earlier, the trial court carefully considered all the relevant factors when reaching its decision as to both maintenance and attorney fees. In particular, the court went into extensive detail in its written order analyzing the parties' respective dissipations from the marital estate to pay attorney fees. See 750 ILCS 5/503(d)(2) (West Supp. 2015) (the court should consider "the dissipation by each party of the marital property"). After considering that factor, in addition to the other section 503(d)(2) and 504(a) factors, the court calculated that Matthew should contribute 25% of Lindsey's attorney fees. That reasoned decision was not an abuse of discretion.

¶ 59 In closing, we thank the trial court for the obvious time and effort it put into its careful analysis of this case, which we found very helpful.

¶ 60 III. CONCLUSION

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

¶ 62 Affirmed.