

NOTICE
Decision filed 04/18/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 140462-U

NO. 5-14-0462

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ANNE-MARIE RONE,)	Williamson County.
)	
Petitioner-Appellee and Cross-Appellant,)	
)	
and)	No. 12-D-450
)	
DENNIS D. RONE,)	Honorable
)	Brian D. Lewis,
Respondent-Appellant and Cross-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in dividing the parties' marital property or in awarding wife maintenance.

¶ 2 Anne-Marie Rone, petitioner and cross-appellant (wife), and Dennis D. Rone, respondent and cross-appellee (husband), both appeal the judgment entered by the circuit court of Williamson County after a hearing on an amended motion to reconsider in their dissolution of marriage proceedings. We affirm.

¶ 3 Husband and wife were married for 45 years. They separated in December of 2012, and a judgment of dissolution of their marriage was entered on January 14, 2014.

In entering the judgment, the trial court initially adopted the allocation of personal property contained in husband's proposed settlement with the exception of one of the parties' two dogs and a television set. Husband was also to pay wife \$61,000 which represented half of an equally divided marital asset. In addition, each party was to pay their own legal fees and costs. The court awarded no permanent maintenance to either party, and all spousal support/maintenance currently in place was to cease upon entry of the judgment.

¶ 4 At the time of the entry of judgment, husband was 72, and wife was 67 years old. Husband was self-employed as a gym consultant in the family business. Wife also worked for the business from 1995 until she had surgery in 2009. Wife did not receive a paycheck for her work, however. Wife is no longer employable, suffering from some sort of reading comprehension disability. Husband also has health issues, but at the time of the hearing, was still working as a consultant part-time for the business. He suffers from heart disease and cancer. While working as a consultant, husband earned between \$25-30,000 a year. He planned to retire shortly after the hearing and would then be receiving social security of \$1,200 a month. He had already transferred his interest in the family fitness club to the parties' daughter in 2005.

¶ 5 Husband claimed he paid approximately \$850 per month in maintenance to wife through the payment of her utilities, health and car insurances, and real estate expenses. Wife had also been awarded \$200 a month in temporary maintenance in addition to her social security of \$649 a month. Wife claimed her income was not sufficient to meet her needs, however, and testified that since June of 2013, a lifelong friend had been helping

to support her through the purchase of food and medications. This same friend had also been paying veterinary expenses for the dogs. Wife still remained in the marital home owned by the parties' daughter. She offered testimony that the house was in need of several major repairs, making it difficult to live in the house comfortably. Husband lived with the daughter and the parties' adult disabled son in another house.

¶ 6 After the entry of the judgment of the dissolution of the marriage, wife filed a motion to reconsider, and subsequently an amended motion to reconsider, pertaining to the issues of maintenance and several items of property awarded to husband, namely the male dog, the only working television set the parties owned, and certain family photos. During the hearing on the motion to reconsider, the court ruled that wife would only be allowed to proffer evidence that was nondiscoverable prior to the second stage hearing of the dissolution proceedings or make argument that the court had misapplied the law to the facts that were produced at the hearing. Wife attempted to proffer evidence that husband was photographed doing yardwork which she believed showed he was still capable of working. On June 17, the court issued its written order on the motion to reconsider. The court stood by its previous ruling regarding the distribution of property including the dog awarded to husband, but reversed on the issue of maintenance. Specifically the court stated that wife had alleged that husband remained employed at the time of the hearing. Therefore, husband was to continue paying maintenance until such time as his employment terminated and his income was proportionately reduced.

¶ 7 Turning to the issue of wife's motion to reconsider, we agree with husband that any evidence presented at the hearing on the motion should not include any evidence

pertaining to things that occurred after the original hearing, in this instance, the photos taken of husband doing yardwork. Evidence at a posttrial reconsideration motion hearing must have been in existence at the time of the trial or pertain to facts that were in existence at the time of the trial. See *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 822 N.E.2d 596 (2005). Husband asserts that wife's posttrial motion dealt with her allegations claiming husband was still able to work. In her efforts to prove that husband was still capable of working, wife attempted to introduce several photographs of husband doing yardwork. The court, however, did not admit these photos. Yet, the court awarded wife continued maintenance. We find no abuse of the court's discretion in modifying its original decision. The court's earlier ruling was based upon what might happen in the future instead of on the facts in existence at the time of the hearing. The court was in essence "correcting" its earlier ruling of awarding no maintenance. Husband had testified he would be retiring shortly after the hearing, but at the time of the hearing, husband was still working, or at least, still receiving a paycheck for consultant work. While so employed, husband's income was four times greater than that of wife. The parties had been married some 45 years, and wife was no longer able to work. Her income and support were insufficient to the point that her lifelong friend was helping support her. In determining whether maintenance is appropriate, the court is to consider the age and health of the parties, as well as the length of the marriage. See *In re Marriage of Puls*, 268 Ill. App. 3d 882, 887, 645 N.E.2d 525, 529 (1994). Accordingly, we find no abuse of the court's discretion under the circumstances. We do note, however, that even when maintenance is awarded, it is also not unreasonable to have such obligation discontinued

or modified with the retirement and reduction in income of the paying spouse. *In re Marriage of Puls*, 268 Ill. App. 3d at 888, 645 N.E.2d at 529. As part of her cross-appeal, wife asks for the amount of maintenance awarded to her to be increased. To do so at this point is, in all likelihood, pointless given that the maintenance award most likely will be terminated and/or reduced with husband's actual retirement.

¶ 8 Wife next finds fault with the award of the parties' male dog to husband. At the time of the parties' separation, husband and wife had two dogs, a male and female Yorkie. The male dog was purchased by husband in 2006. The female dog was a gift to wife. After the parties' separation, wife became the caregiver for both dogs. The court awarded husband the male dog and wife the female dog. Wife claims that the male dog provides her with emotional support. She acknowledges that the dog was originally a marital asset, but asserts that husband transferred title to the dog to her by letting her register the dog's microchip in her name. She further points out that husband failed to exercise any control over the animal, has not had possession of the dog for over 18 months, and failed to pay any expenses related to his care since the parties' separation. Wife also claimed that the male dog incurred significant veterinary costs which her friend covered for her. Husband claimed he purchased the male dog, and this dog was the one with which he walked and spent the most time. He testified that he did not feel he should have to cover any of the dogs' expenses while in wife's possession. Again, we cannot say the court abused its discretion in awarding husband the male dog and wife the female one. Both parties appear to care for the animals, and neither should be deprived of their company completely merely because their guardian-owners have separated and are living

in separate houses. If the parties could not reach some sort of equitable sharing of time with the dogs, the court had no choice but to award husband possession of one of the dogs.

¶ 9 As for all other issues raised in either the appeal or cross-appeal, we find no abuse of the court's discretion. Neither party to this lengthy marriage is in good health. And, there are no significant assets to distribute. While there are items of sentimental value, for instance, the family photos, such items could only be awarded to one of the parties. Husband agreed at the hearing to make copies of the photos for wife, and hopefully husband already has or will live up to his representations. Overall, we find no abuse of the court's discretion under the circumstances presented here.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 11 Affirmed.