

NOTICE
Decision filed 06/29/16. 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) 150212-U

NO. 5-15-0212

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
KELLY N. JONES,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 13-D-147
)	
MICHAEL P. JONES,)	Honorable
)	Julie K. Katz,
Respondent-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in calculating father's net income for purposes of awarding child support by refusing to allow a full deduction of monthly debt payments. Trial court also did not abuse its discretion in ordering Father to pay Mother maintenance for 102 months or in setting an interest rate of 9% on the unpaid cash balance of the dissolution judgment.

¶ 2 Father, Michael P. Jones, appeals the awards of child support, maintenance and interest as entered by the circuit court of St. Clair County in the dissolution of marriage action between Father and Mother, Kelly N. Jones. We affirm.

¶ 3 In September of 2000, the parties were married in St. Louis, Missouri, while both were students at St. Louis University Medical School. Following their graduation in 2003, Father chose to specialize in ophthalmology. Mother chose family medicine, one of the lowest paying fields of medicine, because of the flexible nature of the practice, and the parties' desire to raise children. Their oldest son was born while Mother was in residency. Two additional children were born to the marriage in 2006 and 2009. According to Mother, the plan was for her to work part-time in order to stay home with the children until they finished high school. Even working only part-time, Mother's annual salary was approximately \$100,000.

¶ 4 Father began practicing as an ophthalmologist in 2007, upon joining his brother's practice. He and his brother, along with another eye surgeon, are the principals and partners in several eye clinics in the St. Louis Metro-East area. Father is the managing partner. Their practice has grown through the merger and acquisition of other practices. By the time of the dissolution hearing, the practice consisted of 19 offices. Father's gross income in 2013 totaled \$1,740,397.

¶ 5 By 2011, the marriage was irretrievably broken after Father began a romantic relationship with one of his employees. Father initially moved to the basement of the marital home, and in 2013, moved to his own apartment. Shortly thereafter, Mother filed for dissolution of the parties' marriage. Following a two-day hearing, the court awarded the parties joint custody of the three minor children, subject to an agreed joint parenting order. The court further awarded Mother maintenance in the amount of \$8,500 per month for 102 months, and child support in the amount of \$18,000 a month. Mother was also

awarded 55% of the marital property, \$65,806 for marital funds expended toward Father's business ventures, and \$131,160 as reimbursement for dissipation. The cash portion of the property division owed to Mother was \$534,614, resulting in a total judgment against Father in the sum of \$731,580. By agreed order, this amount was later reduced to \$682,580, to be paid in monthly installments of \$7,500 for 147 months, with interest at 9% of the unpaid balance.

¶ 6 Father argues on appeal that the court erred in awarding \$18,000 per month in child support. Besides contesting the amount of the award as being unreasonable, Father also finds fault with the court's calculation of his net income for purposes of awarding child support. Specifically, Father questions the court's refusal to allow a full deduction of his monthly payments for debts that were "reasonable and necessary expenses for the production of income" (see 750 ILCS 5/505(a)(3) (West 2012)). Father also asserts the court abused its discretion in ordering him to pay \$8,500 per month maintenance for 102 months and in setting 9% as the interest rate on the unpaid cash balance of the judgment.

¶ 7 As a general rule, the amount of an award of child support is a matter within the sound discretion of the trial court which we will not disturb on appeal absent an abuse of that discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37, 974 N.E.2d 417. Likewise, the propriety, amount and duration of maintenance awards are also reviewed for an abuse of the trial court's discretion. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 67, 993 N.E.2d 1062.

¶ 8 Father first argues on appeal that the court erred in calculating his net income for purposes of awarding child support. The parties stipulated that Father's net income from

his profession as an ophthalmologist was \$82,360 per month. Father finds fault with the court's failure to deduct the full amount of his actual monthly payments on debts incurred for the production of income. Other than his student loans, all of the debts incurred were to finance Father's purchase of an interest in his current practice, and for the purchase of a surgery center and building in Maryville. Father's monthly loan payments totaled \$28,611.56. According to Father, based on section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (Act), Father believes his monthly income for child support purposes would, therefore, be \$53,748.44. See 750 ILCS 5/505(a)(3) (West 2012). Instead of deducting the total monthly debt, the court amortized all of his debt payments over a 28-year period, thus arriving at a monthly income of \$71,738.41. Father points out that there was no evidence presented that the debt incurred for the production of income was anything other than reasonable and necessary, nor was there anything in the record that permitted the court to infer that certain share purchases could have been structured as a corporate obligation, as opposed to a personal one. He further asserts that it was improper for the court to speculate that the motive behind Father's efforts to consolidate several of his notes was to reduce his child support obligation.

¶ 9 As previously stated, Father's gross income for 2013 was \$1,737,699. The court, for purposes of determining net income, used a three-year average based on current tax rates, which resulted in a lower gross income. Father argues his support obligation should have been reduced, dollar for dollar, for all of his debt associated with his business activities. The court believed such a large debt amortized over only a 10-year period had the effect of substantially reducing Father's net income during a period for

which he had child support and maintenance obligations. All of the debts, except for his student loans, were incurred for the purchase of capital assets, all of which were awarded to Father in the dissolution. Without re-amortizing the debt, Mother and Father's three children would be bearing the burden of Father's future success, given that his debt would end when his support obligations terminated, leaving him alone to reap the benefits of the assets thereafter. Clearly, Father did not believe he had too much debt given that, while the dissolution was pending, he incurred an additional \$1.2 million in debt for the purchase of additional practices. As Mother points out, the trial court would have been justified in setting child support without reference to any business debts. See *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 656, 698 N.E.2d 1084, 1088 (1998). We cannot say, under the circumstances, that it was unreasonable for the court to extend the amortization period on the debt over Father's working career. This had the effect of making his total monthly debt obligation set at \$10,621 per month, resulting in a net income of \$71,738 per month. In determining what expenses are reasonable and necessary, a court may properly conclude that such expenses are only partially deductible from one's income. *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 19, 48 N.E.3d 1100. Again the trial court's determination of what constitutes "a reasonable and necessary expense" will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 17, 48 N.E.3d 1100. Given the circumstances presented here, the trial court's method of determining net income was more than an appropriate exercise of the court's discretion.

¶ 10 Turning next to the amount of child support awarded, under section 505(a)(1) of the Act, the guideline for child support for three children is 32% of the supporting party's net income. See 750 ILCS 5/505(a)(1) (West 2012). Father's net income, as determined by the trial court was \$71,738.41. This figure, reduced by Mother's monthly maintenance payments, totaled \$63,238.41 a month. With no deviation from the guideline, Father's child support obligation would have been \$20,236.29 a month, instead of the \$18,000 a month awarded by the court. A downward deviation is frequently applied when the parties have high incomes because child support is not intended as a windfall to the custodial parent. On the other hand, the court must also take into account the standard of living the children would have enjoyed absent the parental dissolution. See *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 36, 687 N.E.2d 1080, 1088 (1997). The trial court's decision whether it should deviate from the statutory guideline in setting child support will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391, 561 N.E.2d 402, 406 (1990).

¶ 11 After taking everything into consideration, the court awarded child support in the amount of \$18,000 a month. Father points out that this amount was more than Mother asked for initially, and, more importantly, was sufficient by itself to cover both Mother's and the children's entire cost of living based on Mother's own figures. The financial advisor, however, showed a deficit in Mother's figures of over \$4,800 a month. Even with the award of child support and maintenance added to Mother's own income, she and the three children will be living annually on \$318,000, while Father's income will still be

in excess of \$1 million. We find no abuse of the court's discretion in the amount of child support awarded under the circumstances presented herein.

¶ 12 Father next finds fault with the award of maintenance to Mother for a period of 102 months. Father points out that Mother is also a doctor and could work full-time. The fact that Mother is employable does not diminish her entitlement to maintenance. The trial court's role is not to establish payments based upon specific expenses, but rather to attempt to create the lifestyle to which the parties were accustomed. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 895 N.E.2d 1025 (2008). The parties' original plans were for Mother to return to work full-time when their youngest son reached 18. Mother works 20 hours a week now, with a net income of \$5,696 per month. As Mother pointed out, in order to have more flexibility to raise the parties' children, she entered family practice medicine, a choice that negatively impacted her earnings. Mother will never approach the level of income available to Father. Even if she were employed full-time, Mother would not earn a sufficient income to approach the standard of living she and the children enjoyed during the marriage. Financial independence does not mean the ability to merely meet one's minimum requirements, but also entails the ability to earn an income which will provide a standard of living similar to that enjoyed during the marriage. See *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 773-74, 690 N.E.2d 1023, 1027 (1998). We find no abuse of the court's discretion in awarding Mother maintenance for 102 months, approximately 60% of the length of the marriage. The facts of Father's spending, and his purposeful reduction of his own income during a period of time when the parties'

marriage was undergoing an irretrievable breakdown, are all relevant to his financial ability to comply with the court's judgment.

¶ 13 For his final point on appeal, Father finds fault with the court's award of interest at the rate of 9% on the unpaid balance of the judgment. While the interest rate for a money judgment is currently set at 9% by the legislature (see 735 ILCS 5/2-1303 (West 2012)), that interest rate is not mandatory in this situation. The decision to award interest on a marital dissolution judgment, other than the judgment for child support, is a discretionary matter for the trial court, and is not controlled by the general interest statute. See *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 659, 773 N.E.2d 657, 662 (2002). While Father believes the interest rate should be lower, he does not suggest, nor has he ever suggested, what that rate should be. Given that the debt is unsecured, and the rate of interest is within the trial court's discretion, we find no error in the award given.

¶ 14 For the aforementioned reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 15 Affirmed.