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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
KRISTIN D. HARDY, f/k/a Kristin D. Jury,)	of Kane County.
)	
Petitioner-Appellant,)	
)	
and)	No. 06-DK-1283
)	
KEITH R. JURY,)	Honorable
)	Kevin T. Busch,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment converting an award of rehabilitative maintenance to maintenance in gross was reversed; the appellate court held that petitioner was entitled to permanent maintenance and remanded for the trial court to determine the appropriate amount.

¶ 2 Petitioner, Kristin D. Hardy, f/k/a Kristin D. Jury, appeals from a judgment of the circuit court of Kane County entered on October 18, 2016, following a remand from this court (see *In re Marriage of Hardy and Jury*, 2016 IL App (2d) 151272-U) (*Jury I*). In *Jury I*, we vacated an order converting periodic maintenance to maintenance in gross and reducing the award from \$9,700 per month to \$4,000. We remanded with instructions to the court to consider all of the

factors enumerated in section 504(a) and 510(a)(5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), 510(a)(5) (West 2014)). We also specifically directed the court to balance Kristin's ability to attain self-sufficiency against the likelihood that she would be able to support herself in some approximation of the standard of living established during the marriage. *Jury I*, 2016 IL App (2d) 151272-U, ¶ 23. On remand, the trial court again converted the award of periodic maintenance to one of maintenance in gross and reduced the amount to \$4,700 per month for 48 months, retroactive to March 20, 2015. We now reverse and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 Kristin and respondent, Keith R. Jury, were married on September 24, 1988. The marriage was legally dissolved on April 24, 2008. The judgment of dissolution of marriage (JDOM), entered by Judge Brewster, required Keith to pay Kristin \$9,700 per month as maintenance until their daughter, Morgan, graduated from high school. Upon that event, maintenance was reviewable. The JDOM further provided that Kristin would have the burden of proving her good-faith efforts to attain self-sufficiency and her continuing need for maintenance.

¶ 5 On May 23, 2014, Keith filed a motion to terminate child support and maintenance. On May 27, 2014, the court (Judge Busch) terminated child support but continued the motion with respect to termination of maintenance. Also on May 27, 2014, Kristin filed a motion to review and extend maintenance. She sought permanent maintenance in the amount of \$9,700 per month. On March 19 and 20, 2015, the court conducted an evidentiary hearing on both parties' motions.

¶ 6 The evidence showed as follows. Kristin, 48 years of age, was currently living in Perry, Ohio. The parties' son, Austin, was 24 years old and in the military. Morgan was a university

freshman in Tampa, Florida. At the time of the divorce, Kristin's expenses were approximately \$15,000 per month. At the time of trial, her expenses were approximately \$11,000 per month. In 2011, Kristin began work toward an associate's degree in nursing. She obtained that degree in 2013, and she became employed as a hospital floor nurse in 2014. She worked from 7 p.m. to 7:30 a.m. three nights per week, earning \$25.36 per hour for a 36-hour week. Her job benefits included medical and dental insurance and a retirement plan. Kristin testified that her associate's degree would not afford her advancement. According to Kristin, a bachelor's degree in nursing also would not be beneficial. She would need to obtain a master's degree in nursing to qualify for an administrative position and higher earnings. She testified that she could not continue to work full time and reach her educational goals.

¶ 7 Kristin testified that it would take her longer than normal to achieve those goals because of a learning disability. She studied 10 to 12 hours per day for a class while obtaining her associate's degree, and she received special accommodations. She testified that it takes her longer than normal to learn and retain information, which impacts her career and her ability to take tests.

¶ 8 Kristin testified that, during the marriage, they had a timeshare in Mexico and traveled to Disney World, Washington D.C., and Las Vegas. They took family trips to Ohio. The family automobiles included Hondas, Jeeps, used Suburbans, and a Yukon Denali XL. Kristin shopped in local malls and local markets. She testified that the family ate out six or seven days per week. She lived in a 5 bedroom, 6 ½ bath home with a furnished basement, a living room, sun room, eat-in kitchen, office, and family room. For most of the parties' marriage, Kristin stayed home to care for the children. She testified that she was employed outside the home as a secretary

earning minimum wage in 1991. She also testified that the family moved frequently to advance Keith's career.

¶ 9 The parties stipulated that Keith's W2 income in 2008, the year that they divorced, was \$427,282.31. The parties also stipulated that Keith's W2 income in 2005 was \$357,602.95; in 2006, his income was \$930,415.83; and in 2007, his income was \$450,449.55. The parties further stipulated that Keith's income increased after the divorce. The trial stipulation showed that Kristin had no income in 2005 and 2006; in 2007, she earned \$1,430.76; in 2008, she earned \$439.00; she had no income from 2009 through 2013; she earned \$24,175.20 in 2014; and, as of February 14, 2015, she had earned \$7,935. The stipulation also showed that Kristin was earning \$25.87 per hour at the time of the review hearing.

¶ 10 Kristin testified that her lifestyle changed "drastically" after the divorce. Because of economic uncertainties, she moved into a two-bedroom, 2 ½ bath home, with no basement "villa." During the marriage, she did not need to think about money, but now she had to "money mise." She drives to locations rather than flying, and, instead of purchasing airline tickets without regard to cost, she relies on frequent flyer miles. She also relies on family and friends for accommodations. Kristin testified that she needed \$9,700 in maintenance per month to meet her current expenses.

¶ 11 Lee Knutson, a vocational counselor, testified that Kristin hired him to identify how she could maximize her earning potential and work toward a less physically demanding nursing job. Knutson opined that Kristin needed to gain work seniority and pursue a bachelor's degree in nursing. He testified that she was currently competing against much younger nurses and ran the risk of injury as a floor nurse. Knutson's advice was to cut her work schedule to one shift per week while she studied for her bachelor's degree, which could take several years. With a

bachelor's degree, she could earn between \$66,000 and \$96,000 per year. Those figures represented the national average. According to Knutson, the average in Ohio ranged from \$47,000 to \$78,000.

¶ 12 The report of Lisa F. Naatz, a licensed clinical psychologist, was stipulated into evidence. The report was prepared in 2006 and concluded that Kristin met the criteria for a reading disorder, a mathematics disorder, a disorder of written expression, and developmental dyslexia.

¶ 13 Keith, age 53, testified to his work and earnings history. He was an engineer currently employed as a vice president at Exelon. His earnings had significantly increased since the divorce. Keith's home was valued at approximately \$500,000. He lived with his fiancée, and he paid all of their expenses. He traveled for pleasure. Keith testified that he believed that Kristin had secreted over \$300,000 in assets, because that amount disappeared from her savings account.

¶ 14 Judge Busch made the following findings in his March 20, 2015, oral ruling. The JDOM ordered rehabilitative maintenance. Judge Busch stated that he would not review "*de novo*" the section 504 factors¹ that Judge Brewster considered, including the parties' lifestyle during the marriage. Judge Busch remarked that the parties' lifestyle during the marriage was no longer a "primary consideration" and that arguments pertaining to that factor were appropriately addressed only at the original trial on the dissolution petition. Judge Busch also ruled that Keith's "greatly" increased income since the divorce was relevant only to whether he was able to pay maintenance at a rate similar to what he was paying. Kristin could not "reap the benefit" of Keith's increased, nonmarital income.

¶ 15 Judge Busch then looked at Kristin's efforts to become self-sufficient and made the following findings. Kristin did not begin pursuing a career until several years after the divorce.

¹ 750 ILCS 5/504 (West 2014).

Then she pursued a viable career and established the ability to support herself. She makes over \$55,000 annually. Judge Busch dismissed Kristin's learning disability, because, according to the judge, she has been successful in her occupation despite it. Little weight was placed on Knutson's testimony. However, Judge Busch nevertheless took "at face value" Knutson's testimony that Kristin would be able to earn between \$66,000 and \$90,000 per year in Ohio with a bachelor's degree. In light of Knutson's testimony, the court questioned Kristin's credibility in testifying that a bachelor's degree would do her no good and that a master's would be required for advancement. The court did not know what happened to over \$300,000 in Kristin's bank account, and Kristin did not attempt to explain the missing money. However, Judge Busch also found that Keith's testimony regarding the money was not "compelling" and that it was impeached. A time frame of two to four years for Kristin to obtain a bachelor's degree was not unreasonable. Kristin's needs and expenses had decreased since the divorce. Kristin inflated her expenses on her financial statement filed with the court. While the evidence almost eliminated Kristin's need for maintenance, it nevertheless would be appropriate for Keith to pay some maintenance while Kristin obtained a bachelor's degree.

¶ 16 Judge Busch incorporated his oral findings into a written order of March 30, 2015, reducing maintenance to \$4,000 per month for a period of 48 months, after which maintenance would terminate.

¶ 17 As noted, in *Jury I*, we remanded for the court to consider each of the statutory factors applicable to the review of the maintenance award, including the parties' lifestyle during the marriage. On October 18, 2016, Judge Busch filed his written "Maintenance Review Findings and Order." The court reduced maintenance from \$9,700 per month to \$4,700 per month for 48 months retroactive to March 20, 2015. The court also changed the maintenance award from

periodic maintenance to maintenance in gross, and the court provided that the award of maintenance in gross shall not be subject to termination or review. The court reasoned that Kristin needed maintenance only for as long as it would take her to secure a bachelor's degree in nursing. The court also found that Kristin was able to increase her cash reserves from \$172,000 to over \$300,000 "while traveling to exotic locations around the world." The court expressed skepticism over Kristin's stated needs, in light of the disappearance of approximately \$300,000 in cash from her account. The court further found that "equity is best served if Keith has the ability to see the end of his obligation, and Kristin has the ability to fulfill her goal of obtaining her degree in nursing and becoming self-dependent." The court opined that maintenance "is not intended to be an ongoing transfer of one party's assets to another regardless of need." Kristin filed a timely notice of appeal.

¶ 18

II. ANALYSIS

¶ 19 Kristin first contends that the court abused its discretion in converting the award of periodic maintenance to maintenance in gross without finding that exceptional circumstances existed. She also argues that she should be awarded permanent maintenance of \$9,700 per month. Because maintenance awards are within the sound discretion of the trial court, they will not be disturbed absent an abuse of discretion. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008). Additionally, a trial court's decision to modify maintenance upon conducting a review will not be disturbed absent a clear abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *Heroy*, 385 Ill. App. 3d at 651. It is the burden of the party challenging the trial court's ruling to show an abuse of discretion. *Heroy*, 385 Ill. App. 3d at 651. When a party challenges the court's factual findings regarding a maintenance

determination, the reviewing court will not reverse the trial court's findings unless they are against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010). Findings are against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on the evidence. *Nord*, 402 Ill. App. 3d at 294.

¶ 20 Under the Act, the four common types of maintenance include: permanent maintenance, rehabilitative maintenance for a fixed term, rehabilitative maintenance with a review date, and maintenance in gross. *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 84. Maintenance in gross involves a definite total sum upon the entry of the judgment or a definite total sum in installments over a definite period of time. *Shen*, 2015 IL App (1st) 130733, ¶ 86. What distinguishes maintenance in gross from other types of maintenance is its definite sum and vesting date. *Shen*, 2015 IL App (1st) 130733, ¶ 86. Where warranted by the facts, a court can modify the type of maintenance after a review proceeding. *In re Marriage of Culp*, 341 Ill. App. 3d 390, 396 (2003).

¶ 21 Section 504(a) of the Act (750 ILCS 5/504(a) (West 2014)) provides that the court can grant temporary or permanent maintenance 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, after considering the following factors: (1) the income and property of each party; (2) the respective needs of the parties; (3) the present and future earning capacity of the parties; (4) any impairment to the parties' present or future earning capacity resulting from domestic duties or delayed education or employment opportunities due to the marriage; (5) the time necessary for the party seeking maintenance to acquire the necessary education or training; (6) the standard of living during the marriage; (7) the duration of the marriage; (8) the age, physical, and emotional

condition of the parties; (9) the tax consequences of the property division; (10) the contributions of the party seeking maintenance to the education and career of the other spouse; (11) the valid agreement of the parties; and (12) any other factor that the court expressly finds to be just and equitable. *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 83.

¶ 22 Section 510 provides for modification and termination of awards of maintenance, support, educational expenses, and property disposition. 750 ILCS 5/510 (West 2014). A judgment regarding maintenance can be modified only upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a-5) (West 2014). In proceedings to modify, review, or terminate maintenance, the court must consider the factors enumerated in section 504(a), as well as those additional factors enumerated in section 510(a-5). 750 ILCS 5/510(a-5) (West 2014). The following factors are enumerated in section 510(a-5): (1) any change in the employment status of either party and whether the change has been made in good faith; (2) the efforts, if any, made by the maintenance recipient to become self-supporting; (3) any impairment of the present and future earning capacity of either party; (4) the tax consequences of the maintenance payments upon the respective circumstances of the parties; (5) the duration of maintenance payments relative to the length of the marriage; (6) the property, including retirement benefits, awarded to each party in the divorce; (7) the parties' increase or decrease in income since the divorce; (8) the property acquired and currently owned by each party after the divorce; and (9) any other factor that the court expressly finds to be just and equitable. No one factor is determinative. *Patel*, 2013 IL App (1st) 112571, ¶ 84. Nor is the trial court required to give equal weight to each factor, so long as the court's balancing of the factors is reasonable. *Patel*, 2013 IL App (1st) 112571, ¶ 84.

¶ 23 In his October 18, 2016, order, Judge Busch made specific findings as to each factor under section 504(a) and section 510(a-5), and then stated that his primary reason for converting periodic maintenance to maintenance in gross was that Kristin needed assistance only until she secured her nursing degree. The court supported that finding by citing evidence that, while traveling to exotic locations, Kristin had amassed almost \$338,000 in cash that was unaccounted for at the review hearing. The court expressed skepticism that Kristin's needs were as substantial as she claimed. The court found that she padded her expense affidavit by listing certain expenses twice as well as listing expenses for Morgan that Keith was paying. The court also found that Kristin's expenses had been "significantly" reduced since the divorce, and that she had very little debt. The court noted that Kristin was "well on her way" to a "self-sustaining successful career." The court found that Keith's income at the time of the divorce was around \$250,000 and that Kristin had zero income then but was earning at least \$60,000 at the time of the review hearing.

¶ 24 We first consider Kristin's contention that she is entitled to permanent maintenance. If she is correct, the trial court abused its discretion in converting periodic maintenance to maintenance in gross. As noted, the JDOM provided for periodic maintenance. At the time of the divorce, Kristin had no income and had not yet embarked on her nursing studies and career. The purpose of rehabilitative maintenance is to provide an incentive for the recipient to use diligence in procuring training or skills necessary to attain self-sufficiency. *In re Marriage of Schlitz*, 358 Ill. App. 3d 1079, 1085 (2005). This policy, however, must be balanced against a realistic appraisal of the likelihood that the spouse receiving rehabilitative maintenance will be able to support herself in some reasonable approximation of the standard of living that the parties established during the marriage, especially where the marriage is of long duration and the spouse has had a long absence from the labor market. *In re Marriage of Hellwig*, 100 Ill. App. 3d 452,

464-65 (1981). At a review hearing, the court considers the factors set forth in sections 504(a) and 510(a-5) of the Act and determines whether to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms.” *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 24.

¶ 25 By the time of the review hearing, much had changed in the eight years since the Jurys’ divorce. The court found that (1) Kristin was earning at least \$60,000 a year as a nurse and could expect to earn more with a bachelor’s degree; (2) she had amassed considerable cash savings; (3) she had virtually no debt, and (4) her expenses had significantly decreased. Kristin argues that, despite all her efforts, she is not able—and will never be able—to support herself in a manner similar to the parties’ lifestyle during the marriage. “Whether one is able to meet her reasonable needs and become financially independent is still set in the context of what the standard of living was during the marriage.” *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 14.

¶ 26 The court found that the parties’ lifestyle during the marriage was “comfortable but not extravagant.” It also found that Keith’s income at the time of the divorce was “around” \$250,000. Kristin argues that Keith’s income in 2008 was \$427,282.31. Indeed, she derives that figure from the trial stipulation entered into by the parties. Kristin also maintains that Judge Brewe found that \$9,700 *in addition to child support* in the amount of \$4,100 per month would meet her reasonable lifestyle needs. She urges that, as she is no longer receiving child support, she still requires \$9,700 per month to meet her needs. Kristin further asserts that Judge Busch failed to give enough weight to her learning disability. Finally, Kristin argues that, after remand, and despite this court’s explicit instruction, Judge Busch failed to consider her ability to support herself in some approximation to the standard of living that she enjoyed during the marriage.

¶ 27 Maintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708 (2006). However, permanent maintenance is appropriate if a spouse is employable only at an income that is substantially lower than the previous standard of living. *Samardzija*, 365 Ill. App. 3d at 708. “When one spouse is unable to support herself in the manner in which the parties lived during the marriage, it is an abuse of discretion to award only rehabilitative maintenance.” *In re Marriage of Veile*, 2015 IL App (5th) 130499, ¶ 14.

¶ 28 Here, the court focused exclusively on Kristin’s ability to become self-sustaining. Her own expert testified that she could earn between \$66,000 and \$90,000 with a bachelor’s degree, although that amount would be less in Ohio, where she lived. Consequently, we disagree with Kristin that her future income is speculative. Nor do we agree that the evidence of her learning disability showed that it will prevent her from achieving her degree. The evidence showed only that it would take her longer to obtain the degree than might otherwise be the case. The trial court was correct in noting that, in the eight years since the divorce, Kristin had achieved a great deal, despite her learning disability.

¶ 29 However, we agree with Kristin that the court did not consider her success in the context of the lifestyle that she enjoyed during the marriage. In modifying the award of periodic maintenance to maintenance in gross, the court opined that maintenance “is not intended to be an ongoing transfer of one party’s assets to another regardless of need.” This statement does not accurately reflect the law. Section 504 of the Act legitimizes permanent maintenance. 2 H. Joseph Gitlin, *Gitlin on Divorce: A Guide to Illinois Matrimonial Law*, § 15-12(a) (3d ed. 2010). “Illinois courts give consideration to a more permanent award of maintenance to wives who have undertaken to have children, raise and support the family, and who have lost or been

substantially impaired in maintaining their skills for continued employment during the years when the husband was getting his education and becoming established.” 2 H. Joseph Gitlin, *Gitlin on Divorce: A Guide to Illinois Matrimonial Law*, § 15-12(a) (3d ed. 2010). “When former spouses have grossly disparate earning potentials, the goal of financial independence may not be achievable because of the dependent former spouse’s inability to maintain the standard of living shared during the marriage.” *In re Marriage of Charles*, 284 Ill. App. 3d 339, 348 (1996). The court must consider, not only the former spouse’s current needs, but also how much maintenance is necessary to allow her to enjoy a standard of living that is comparable to what she enjoyed during the marriage. *Brankin*, 2012 IL App (2d) 110203, ¶ 17.

¶ 30 The court’s finding that Keith’s 2008 income was “around \$250,000” was against the manifest weight of the evidence. The parties stipulated that Keith’s 2008 income, as reflected on his W2, was \$427,282.31. Keith’s 2008 income was not an anomaly. The parties also stipulated that Keith’s W2 income in 2007 was \$450,449.55 and \$930,415.83 in 2006. The parties further stipulated that Kristin was earning \$27.85 per hour at the time of the review hearing. It is not disputed that Keith continues to enjoy the same lifestyle as that established during the marriage. Similarly, it is not disputed that he can pay permanent maintenance.

¶ 31 Even if we assume that Kristin could earn \$90,000 or \$96,000 with a bachelor’s degree, it would not approximate the lifestyle that the parties established during the marriage. We are mindful that this was a 20-year marriage, and that Kristin was out of the work force for much of that time raising the children. The evidence showed that she worked at a minimum-wage clerical job in 1991. The evidence also showed that the family made a number of moves to support Keith’s career.

¶ 32 A wide disparity in income and earning potential is itself a basis for awarding permanent maintenance, even where the former wife becomes able to support herself. In *Brankin*, this court held that permanent maintenance was appropriate even though the former wife earned a “significant” salary of \$75,000, where the former husband’s annual income was \$500,000. *Brankin*, 2012 IL App (2d) 110203, ¶ 14. In *Heroy*, the former wife’s monthly expenses during the marriage exceeded \$56,000, entitling her to permanent maintenance, even assuming that she could earn over \$100,000 per year as a law librarian. *Heroy*, 385 Ill. App. 3d at 653, 657.

¶ 33 Keith’s reliance on *In re Marriage of Cantrell*, 314 Ill. App. 3d 623 (2000), is misplaced. In *Cantrell*, this court held that the former wife’s award of maintenance should have been terminated, because she had done little toward finding gainful employment or advancing her efforts to become self-sufficient. *Cantrell*, 314 Ill. App. 3d at 630. As noted, Kristin embraced the challenge of becoming self-sustaining. Yet, the evidence demonstrated that she will never be able to earn a salary that is commensurate with the lifestyle that she enjoyed during the marriage.

¶ 34 Keith also argues that Kristin’s litigiousness is a reason to uphold the court’s conversion of periodic maintenance to maintenance in gross with a definite end date. The court noted that equity would be best served if Keith could “see the end of his obligation.” The elimination of endless destructive bickering over personal or financial matters is properly considered in awarding maintenance in gross. *Patel*, 2013 IL App (1st) 112571, ¶ 94. That is not the case here. Kristin’s request for permanent maintenance, as discussed above, is justified.

¶ 35 For these reasons, we determine that the trial court abused its discretion in denying Kristin’s petition for permanent maintenance. It follows that the court also abused its discretion in converting the initial award of periodic maintenance to maintenance in gross. We, therefore, remand this cause for a calculation of a just award of permanent maintenance. In determining

permanent maintenance, the court *shall* explicitly, and on the record, balance Kristin's ability to become self-sufficient against the likelihood that she will be able to support herself in some reasonable approximation of the standard of living established during the marriage, as evidenced by the parties' stipulations, exhibits, and testimony.

¶ 36

III. CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Kane County is reversed and remanded for further proceedings consistent with this Order.

¶ 38 Reversed and remanded.