2018 IL App (2d) 160982-U
No. 2-16-0982
Order filed August 14, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KATHERINE O'CONNOR,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	
and	)	No. 12-D-1600
WILLIAM O'CONNOR,	)	Honorable Theodore S. Potkonjak,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding that husband's trust disbursements were income for child support and maintenance purposes, but the court erred in finding that his unprofitable stock market transactions were dissipation and that an agreed support order required him to pay the mortgage on the marital residence. A remand is necessary to remedy stock market dissipation and mortgage issues and to address deviations from statutory guidelines for child support and maintenance.

¶ 2 Respondent, William O'Connor, appeals certain portions of the judgment for dissolution of his 15-year marriage to petitioner, Katherine O'Connor. First, William challenges the trial court's finding that a diminution of value of a marital 401(k) retirement account that he controlled qualifies as dissipation. Second, he disputes the finding that his withdrawals from his

nonmarital trusts qualify as income for purposes of child support and maintenance. Third, he argues that the court misinterpreted an agreed support order in finding him responsible for the mortgage payments, foreclosure costs, and real estate taxes for the marital residence. The court found his nonpayment of those obligations to be dissipation. Fourth, he claims, and Katherine concedes, that his maintenance and child support obligations deviate from the statutory guidelines. The parties dispute whether the deviations result in excessive maintenance and child support.

¶ 3 First, we hold that the cause must be remanded because the trial court abused its discretion in allowing Katherine to allege stock market dissipation for the first time during closing argument, but more importantly, she failed to make a *prima facie* case because she did not prove that William's transactions directly caused the losses. Second, the court did not err in finding that William's trust distributions represent a monetary gain that may be considered income when calculating child support and maintenance. Third, the court misinterpreted the agreed support order, which unambiguously made Katherine responsible for "all expenses re: the marital residence," which would necessarily include the mortgage, foreclosure costs, and real estate taxes. Fourth, because we vacate the rulings regarding stock market dissipation and the marital residence expenses, we direct the trial court on remand to revisit the maintenance and child support awards and modify them or explain why they should deviate from the statutory guidelines. The judgment is affirmed in part, vacated in part, and remanded for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 Katherine petitioned for dissolution on August 16, 2012, when she was 42 years old, William was 45 years old, and their four children were ages 14, 10, 6, and 5. Katherine was

awarded custody by agreement. By the time of dissolution, the eldest child had become emancipated. During the marriage, Katherine worked primarily as a stay-at-home mother but occasionally was employed in human resources, administration, and at the Boy Scouts of America. William had been employed by the Financial Industry Regulatory Authority (FINRA) for more than 17 years but began new employment with Landolt Securities, Inc. near the end of the proceedings.

¶ 6 The parties owned and resided primarily in a marital residence in Grayslake, which, at the time of dissolution, was encumbered by an outstanding mortgage of $186,366 and was the subject of foreclosure proceedings. William held in trust another residence and an adjacent lot in Apple River, which was encumbered by an outstanding mortgage of $96,689.

¶ 7 On September 18, 2012, the trial court entered an agreed order that required William to make monthly payments for the mortgage ($2,139), the homeowner's insurance ($133), various credit card bills, and temporary support to Katherine ($1,600). Katherine agreed to pay the monthly utility bills from William's support payments. She testified at trial that she also had been paying the homeowner's insurance since August 2012.

¶ 8 On May 21, 2013, William petitioned to modify the support order to account for new expenses related to housing, transportation, automobile insurance, a mobile telephone, and psychological and psychiatric services. The motion specifically argued that William lacked the resources to continue paying the mortgage on the marital residence, among other expenses. At some point in 2013, a complaint for foreclosure of the mortgage was filed in Lake County due to nonpayment.

¶ 9 On January 22, 2014, the trial court entered an agreed order to modify William's support obligation. Section 1 set monthly child support at $2,054 and monthly maintenance at $676,

based on William's monthly net income of $5,135. The change in support applied "retroactively from May of 2013 going forward." Section 2 provided that "the prior payments made by [William] to [Katherine], against the amount due pursuant to this order ($2,730 per month) shall be retroactively adjusted [and] the balance due [Katherine] or to be refunded to [William] shall be adjusted [and] offset against the final settlement."

¶ 10 Section 3 of the agreed order provided that "[Katherine] shall be responsible for all expenses re: the marital residence [and] her auto expenses from January 1, 2014, to date, with retroactive adjustment to May 2013." Section 5 stated, "the final retroactive adjustment of the [illegible] mortgage payments from 5/13 through 12/31/2013 shall be adjusted in the final settlement, pursuant to [William's] motion to reduce his support obligations to [Katherine]." The order was signed by both parties and entered by Judge Donna Vorderstrasse.

¶ 11 On August 31, 2016, Judge Theodore Potkonjak entered the judgment of dissolution, dividing the marital estate 60% to 40% in favor of Katherine. Section 7(c)(ii) of the court's findings stated that William's 401(k) retirement account, which was marital property, had a value of $150,785, with an available balance of $116,055. The court found that William had modified the investment allocation in 2014, which diminished the value by $29,196, or -16.2%. The court stated that the Standard & Poor's 500 (S&P 500) stock index increased 14% during that period, which led the court to conclude that "[a]s a result of William's conduct, the marital estate was diminished and the court finds that William's actions are dissipation."

¶ 12 In section 12, the court found that William began employment with Landolt Securities on July 1, 2016, with an annual salary of $84,000 without benefits. His preceding salaries, in chronological order, from FINRA were $101,200, $94,314, and $96,437.

¶ 13 In section 19, the court found that no court order had required Katherine to pay the mortgage on the marital residence. Although the January 22, 2014, agreed order expressly made Katherine "responsible for all expenses" regarding the residence, the court reasoned that Judge Vorderstrasse could not have intended for Katherine to pay the mortgage because her income would not support it.

¶ 14 In section 20, the court found that the orders entered on September 18, 2012, and January 22, 2014, required William to pay the monthly mortgage payments, but he failed to do so. The overdue payments from February 1, 2014, through August 1, 2016, were $69,112, and William's nonpayment of that amount qualified as dissipation due to the parties' loss of equity in the home.

¶ 15 In sections 22 and G, the court awarded Katherine $2,125 in monthly maintenance from William's base salary and an additional 30% of gross income from all additional sources, including his trust withdrawals and employment bonuses. The court specified five possible termination events for maintenance: William's death; Katherine's death; Katherine's remarriage or civil union, Katherine's cohabitation; or February 1, 2030. Provided that none of the events had yet occurred, "Katherine's continued need for maintenance is reviewable upon her filing of a petition *** to extend William's obligation."

¶ 16 In section 25, the court ordered William to pay $1,356 in monthly child support as well as the "statutory percentage of income from all sources over and above [his] base income," including his trusts. Finding that William did not pay support from his trust income from January 2013 through January 2016, the court calculated that he owed $33,816 in retroactive support, representing 40% of the $84,541 he received in disbursements.

¶ 17 In section J(1) of the dissolution judgment, the trial court found that the marital residence was encumbered with a mortgage balance of about $220,000. The court awarded the marital

residence to Katherine "free and clear," with the right to exclusive possession. The court also ruled that William "shall be solely responsible for any deficiency or liability associated with the [marital residence] as a result of the foreclosure." In section J(2), the court directed the parties to sell the Apple River properties, making William "solely responsible for the monthly mortgage payments, property taxes, and all expenses relative to the properties until the sale."

¶ 18 William's posttrial motions to reconsider the judgment were denied, and this timely appeal followed.

¶ 19 II. ANALYSIS

¶ 20 William challenges several findings that the trial court incorporated into the dissolution judgment: (1) the diminution in value of the 401(k) account that he controlled amounts to dissipation; (2) William's withdrawals from his trusts are income for purposes of child support and maintenance; (3) he must pay the mortgage, foreclosure costs, and real estate taxes for the marital residence; and (4) he must pay monthly maintenance of $2,125 for 13.6 years and monthly child support of $1,356.

¶ 21 A. Dissipation from Stock Market Losses

¶ 22 1. Forfeiture

¶ 23 William disputes the trial court's determination that losses from the marital 401(k) account amount to dissipation. First, he claims that Katherine's dissipation claim was untimely because it was raised for the first time during written and oral closing arguments. He alleges defective notice under the current version of section 503(d)(2) of the Dissolution Act, which provides that, when a spouse alleges dissipation, (1) a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later, and (2) the notice of intent to claim dissipation shall contain, at a minimum, a date or period of

time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred. 750 ILCS 5/503(d)(2)(i), (d)(2)(ii) (West 2016).

¶ 24 Katherine implicitly concedes noncompliance with section 503(d)(2) but responds that William introduced his own untimely dissipation claim during closing arguments, and therefore, "[i]t is disingenuous for William to argue that Katherine is barred from pursuing dissipation because she did not file a notice of intent to claim dissipation when he did the same thing." Katherine argues that (1) William forfeited the notice issue by failing to raise it in the trial court, (2) the notice requirement of section 503(d)(2) does not apply because it became effective after she petitioned for dissolution; and (3) even if her notice was defective, it does not compel reversal of the finding of dissipation.

¶ 25 We agree with Katherine that the relevant version of section 503(d)(2) did not render her dissipation claim untimely. The notice requirements of section 503(d)(2) were enacted by Public Act 97-0941 (Pub. Act 97-0941, §5, eff. Jan. 1, 2013) and made applicable only to petitions for dissolution filed on or after January 1, 2013. Katherine filed her petition on August 16, 2012, when the notice provisions were not yet in effect.

¶ 26 That said, raising dissipation for the first time after the proofs have closed is improper, especially in light of the trial court basing its decision on the factual representations of Katherine's counsel during closing argument. *Cf.*, *Zito v. Zito*, 196 Ill. App. 3d 1031, 1036 (1990) (husband forfeited dissipation claim by failing to suggest to the trial court that wife used funds for a nonmarital purpose and failing to file a pretrial memorandum required by local rules, despite the trial court's specific instruction that he do so).

¶ 27 In *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991), the husband argued that the wife's waiver of an issue of dissipation precluded appellate review. The wife failed to check a box in a pretrial memorandum indicating that dissipation of marital assets was at issue. *Davis*, 215 Ill. App. 3d at 777. The husband claimed that the wife raised the issue for the first time in closing argument, but the record showed that the husband knew from the start of the trial that the wife intended to raise the issue for the court to consider. In fact, the husband failed to object when the wife's counsel mentioned it during opening statement and when evidence concerning the dissipation of assets was presented. *Davis*, 215 Ill. App. 3d at 777. Here, William did not object to Katherine making the dissipation claim in her closing argument, and William raised his own claim of dissipation for the first time during closing argument, which tends to indicate that any procedural objection was forfeited by both parties.

¶ 28 2. *Prima Facie* Case

¶ 29 Regardless of forfeiture, we conclude that Katherine failed to make a *prima facie* case that the diminution in value of the 401(k) account was dissipation. William disputes the adequacy of proof, arguing that Katherine's counsel improperly made representations regarding the performance of the S&P 500 index. The court took judicial notice of the index, and without hearing additional evidence, used it to draw an unfavorable comparison to the 401(k) account.

¶ 30 Dissipation is one of the factors in section 503(d) of the Dissolution Act that a trial court must consider in allocating marital property equitably in just proportions. *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 33. Dissipation is 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.' " *Schneeweis*, 2016 IL App (2d) 140147, ¶ 33 (quoting *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990)); *In re Marriage of Brown*,

2015 IL App (5th) 140062, ¶ 66. Dissipation is premised upon waste and involves the diminution in the marital estate's value due to a spouse's actions. *Brown*, 2015 IL App (5th) 140062, ¶ 67. An act may constitute dissipation even though a spouse does not necessarily derive a personal benefit from it if the expenditure has some detrimental effect upon the marital estate. *Brown*, 2015 IL App (5th) 140062, ¶ 67.

¶ 31 Whether a given course of conduct constitutes dissipation depends upon the facts of the particular case. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 35. A spouse's decision to embark on a course of investing with marital funds does not occur in a vacuum, and whether the conduct amounts to dissipation depends on the context in which it occurred. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 35. We review the trial court's finding of dissipation deferentially and will not reverse it unless it is against the manifest weight of the evidence, that is, unless the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 35.

¶ 32 The spouse alleging dissipation must make a preliminary showing before the burden shifts to the other spouse to refute the accusations. *Brown*, 2015 IL App (5th) 140062, ¶ 66. Once a *prima facie* case for dissipation has been made, the party charged with dissipation must prove by clear and specific evidence how the funds were spent. *Brown*, 2015 IL App (5th) 140062, ¶ 66.

¶ 33 Katherine alleged dissipation based on the diminution of value of the marital 401(k) account while the marriage was undergoing an irreconcilable breakdown. Specifically, Katherine argued that the 401(k) account was marital property and that William changed the asset allocation in the account after Katherine initiated dissolution proceedings in August 2012. Katherine relied on quarterly account statements from October 1, 2014, through June 30, 2015.

According to each statement, 100% of the assets were allocated to short term reserves, which allegedly was a result of transactions by William after dissolution proceedings began. Based on William's age, the statements "suggested" allocation mixes of 75% stocks, 25% bonds, and 0% short term reserves.

¶ 34 Katherine alleged that it was unreasonable for William to persist in allocating 100% in short term reserves, despite consistent losses. William countered that he did not intend to lose money when he reallocated the assets and that the decrease was simply the result of market fluctuations. Intent to diminish the marital estate is one factor that a court may consider when determining whether dissipation has occurred, but it is by no means the sole relevant factor, or a dispositive factor. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 40. Indeed, the definition of dissipation does not include any reference to the dissipating spouse's intent. Rather, dissipation is founded on objective factors: whether the alleged dissipation occurred while the marriage was undergoing a breakdown, whether the relevant expenditure or conduct was undertaken for a purpose unrelated to the marriage, and whether the expenditure or conduct benefited only the spouse charged with dissipation. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 40 (citing *O'Neill*, 138 Ill. 2d at 497).

¶ 35 There is a spectrum of risky conduct by a spouse, and courts may arrive at different estimations of whether the conduct is merely a combination of good faith and bad luck or clear dissipation. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 41. For instance, gambling with marital funds historically has been treated as dissipation, despite the fact that gamblers no doubt go to the racetrack or the casino intending to win. *Schneeweis*, 2016 IL App (2d) 140147, ¶ 41; In re Marriage of Sobo, 205 Ill. App. 3d 357, 360 (1990) (use of marital assets to pay gambling debts was dissipation); *In re Marriage of Smith*, 114 Ill. App. 3d 47, 51 (1983) (spending on a trip to

Las Vegas "was obviously not money spent for a marital purpose"); *In re Marriage of Rimmele*, 102 Ill. App. 3d 88, 90 (1981) (tax liability triggered by withdrawal from retirement plan charged wholly to spouse where withdrawal was used to fund his activities including gambling).

¶ 36 Dissipation-by-investment is a viable theory under certain circumstances, but here, Katherine failed to make a *prima facie* case. Katherine presented no evidence that William used the account for his sole benefit and for a purpose unrelated to the marriage. She does not claim that William made withdrawals from the account, only that he reallocated the funds imprudently. While not dispositive, the evidence showed that William intended to increase the value of the marital estate, not waste it, and he did not dispute that any gain resulting from his investment tactics would have been classified as marital property.

¶ 37 Katherine, armed with the benefit of hindsight, argues that William's asset allocation was flawed for two reasons: (1) it underperformed the S&P 500 index and (2) it deviated from the recommended asset mixes as shown on the statements. Katherine's criticisms are internally inconsistent because investing in the index, which is 100% stocks, would not conform to the suggested asset mix of 75% stocks, 25% bonds, and 0% short term reserves.

¶ 38 Katherine convinced the court to delve into William's asset allocation relative to fluctuations in the marital account and the broader American stock market, as represented by the S&P 500 index. The court deemed the 401(k) account to be underperforming in comparison to the S&P 500 index, but the court heard no evidence of a nexus between the index and the marital account that would tend to support a finding of dissipation. There is no evidence that the 401(k) account was somehow tied to the S&P 500 index, and therefore, there is no premise for Katherine's claim that William's unprofitable transactions are waste simply because the index rose around that time.

¶ 39 Compounding the impropriety of Katherine raising the issue for the first time during closing argument and the court arbitrarily comparing the value of the 401(k) account to one stock index, the court accepted Katherine's claim, without evidence, that the entire diminution was a direct result of William's transactions. Even if the account could be viewed to be unreasonably underperforming and that the underperformance occurred after William's transactions, Katherine failed to make a *prima facie* showing that the allocation changes caused the losses. Katherine alleges that William failed to follow the investment recommendations, but she offered no proof that the losses would not have occurred if the recommendations had been followed. In fact, the suggested allocation mix did not recommend any specific investment products or purport to take into account other financial considerations, such as pending litigation. Katherine presented no evidence that the losses sustained could be directly attributed to William's actions.

¶ 40 Katherine's failure to make a *prima facie* case in this case illustrates the utility of a fully developed offer of proof. An inquiry into dissipation-by-investment is fact intensive, requiring detailed financial information and perhaps expert testimony, and better served by an evidentiary hearing. *Cf.*, *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 65 (how marital funds were spent is usually a fact-intensive inquiry that calls upon the trial court to make a credibility determination as to the spouse's explanation). Here, neither party moved to reopen proofs to present evidence relevant to Katherine's dissipation-by-investment claim.

¶ 41 B. Trust Disbursements

¶ 42 William next argues that the trial court erred as a matter of law in considering his withdrawals from his nonmarital trust accounts as income for child support and maintenance. The accounts are generation-skipping trusts funded by the estate of William's father. William's

children are beneficiaries of the principal, while William, as trustee, is entitled to distributions from the income earned on the principal.

¶ 43 Pursuant to section 504(a) of the Dissolution Act, a trial court may grant maintenance to either spouse in an amount, and for a duration of time, that the court deems just after considering all relevant factors. 750 ILCS 5/504(a) (West 2016). The version of section 504(a) in effect at the time of dissolution listed "the income and property of each party" among the 14 factors to be considered by a court when ordering maintenance. 750 ILCS 5/504(a) (West 2016). For purposes of section 504, the term "gross income" broadly means all income from all sources, within the scope of that phrase in section 505. 750 ILCS 5/504(b-3) (West 2016).

¶ 44 In turn, section 505(a)(3) defines net income for child support as "the total of all income from all sources" minus various enumerated deductions. 750 ILCS 5/505(a)(3) (West 2016). An important purpose of the Dissolution Act is to ensure reasonable provisions for minor children (*In re Marriage of Sharp*, 369 Ill. App. 3d 271, 280 (2006)), and thus courts consistently have held that this is a broad and expansive definition. See, *e.g.*, *In re Marriage of Mayfield*, 2013 IL 114655, ¶ 16; *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004).

¶ 45 Our supreme court has explained that income is simply "a gain or recurrent benefit" received by an individual (*Rogers*, 213 Ill. 2d at 136 (quoting Webster's Third New International Dictionary 1143 (1986))) or "the money or other form of payment that one receives" (*Rogers*, 213 Ill. 2d at 137 (quoting Black's Law Dictionary 778 (8th ed. 2004))). Income also broadly "includes gains and benefits that enhance a noncustodial parent's wealth and facilitate that parent's ability to support a child." *Mayfield*, 2013 IL 114655, ¶ 16 (citing *Rogers*, 213 Ill. 2d at 137). The Dissolution Act creates a rebuttable presumption that any such gain or benefit is

income for child support unless specifically excluded by the statute. *Sharp*, 369 Ill. App. 3d at 280.

¶ 46 Most often, these gains and benefits come from sources such as employment, investments, royalties, or gifts (*Mayfield*, 2013 IL 114655, ¶ 16), but the definition of income is not limited to these types of payments. Payments received by noncustodial parents deemed to be income include lump-sum worker's compensation awards, individual retirement account distributions, military allowances, and pensions (*In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 54 (2008)); investment income, earnings from bonds and securities, and severance pay and deferred compensation payments (*Department of Public Aid ex rel. Jennings v. White*, 286 Ill. App. 3d 213, 218 (1997)); gifts from parents (*Rogers*, 213 Ill. 2d at 137); and most important for our purposes, distributions from a trust (*Sharp*, 369 Ill. App. 3d at 280-81).

¶ 47 In *Sharp*, this court decided that trust distributions received by the payor could be considered income in determining whether his failure to pay support was willful. The payor argued that income derived from a spendthrift trust was not subject to support obligations, but we disagreed. Spendthrift trust provisions restrict a beneficiary's ability to attach the trust corpus, but once trust income is paid to the beneficiary, the income is no longer subject to the protection of the spendthrift provisions in the trust, and the spendthrift provisions are not effective to shelter the trust assets from the beneficiary's creditors. *Sharp*, 369 Ill. App. 3d at 281.

¶ 48 When a trust beneficiary receives a distribution, this unfettered right of control negates any future effect of the spendthrift clause, and because the rationale that prevents creditors from reaching the trust assets is that the beneficiary cannot reach them, it would strain both logic and the law to continue to enforce a spendthrift clause after the beneficiary had access to the trust assets. *Sharp*, 369 Ill. App. 3d at 281. Thus, the trust income, once distributed to the payor

under the terms of the trust, could be used for any purpose, including the payment of his child support and maintenance obligations. *Sharp*, 369 Ill. App. 3d at 281. *Sharp* is on point and supports the trial court's conclusion that William's trust disbursements qualify as a monetary gain or benefit that enhance his wealth and facilitate his ability to support his children. See *Mayfield*, 2013 IL 114655, ¶ 16 (citing *Rogers*, 213 Ill. 2d at 137).

¶ 49 William cites *In re Marriage of McGrath*, 2012 IL 112792, where the supreme court decided that funds regularly withdrawn from the payor's savings account were not income for child support purposes because the account already belonged to him. *McGrath*, 2012 IL 112792, ¶¶ 14-15. William's reliance on *McGrath* is misplaced. Unlike the trusts in this case, the savings account belonged to the payor by virtue of the dissolution judgment itself. *McGrath*, 2012 IL 112792, ¶ 4. The post-dissolution withdrawals in *McGrath* were not "income" because they did not constitute a gain or benefit.

¶ 50 This case presents a different posture in that the trusts are being assessed as part of the dissolution. William is a beneficiary of the trusts and although they are his non-marital property, they do not "belong" to him. William's children own the principal, and he receives nothing until income from the principal is disbursed. Upon disbursement, he obtains the gain or benefit, which may be considered income. Therefore, we conclude that the trial court did not err as a matter of law in drawing this legal distinction.

¶ 51 C. Marital Residence Expenses

¶ 52 Based on its interpretation of the January 22, 2014, agreed support order, the trial court found William to be responsible for the mortgage payments, foreclosure costs, and real estate taxes for the marital residence, at all relevant times. The dissolution judgment awarded Katherine the marital residence "free and clear," with the right to exclusive possession. The

court also found William solely responsible for any deficiency or liability resulting from the foreclosure. We agree with William that the unambiguous language and procedural history of the agreed orders show that the parties intended to shift the marital residence expenses from William to Katherine, retroactive to May 2013.

¶ 53 An agreed order is considered to be a contract between the parties, and therefore, its construction is governed by principles of contract law. *Draper and Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 27. The primary purpose of contract interpretation is to effectuate the intent of the parties, and the order must be interpreted in its entirety, considering all facts and circumstances surrounding its execution, as well as all pleadings and motions from which it emanates. *Draper and Kramer*, 2014 IL App (1st) 132073, ¶ 27. We review *de novo* the construction, interpretation, and effect of a contract. *Draper and Kramer*, 2014 IL App (1st) 132073, ¶ 27. An agreed order is effectively the parties' private contractual agreement, and therefore, it is generally binding on the parties and cannot be amended or varied without the consent of each party. *Draper and Kramer*, 2014 IL App (1st) 132073, ¶ 28. When the language of the contract is clear and unambiguous, a court decides the intent of the parties solely from the words of the contract, given their plain and ordinary meaning. *In re Marriage of Best*, 387 Ill. App. 3d 948, 949 (2009).

¶ 54 On September 18, 2012, the trial court entered an agreed order that required William make monthly payments of $2,272 for the mortgage and homeowner's insurance and $1,600 for temporary support to Katherine. Katherine agreed to pay the monthly utility bills from William's support payments.

¶ 55 On January 22, 2014, the court entered the agreed order to modify William's support obligation. His combined monthly maintenance and child support obligation increased from

$1,600 to $2,730, with the change applying "retroactively from May of 2013 going forward." The order provided that the $1,130 monthly increase from May 2013 through December 2013 was not due immediately but would be incorporated as an offset into the final judgment, depending on William's payment history.

¶ 56 The agreed order also stated that "[Katherine] shall be responsible for all expenses re: the marital residence [and] her auto expenses from January 1, 2014, to date, with retroactive adjustment to May 2013." Like the increase in the support payments, the retroactive adjustment of the mortgage payments from May 2013 through December 2013 was to be incorporated into the final judgment, "pursuant to [William's] motion to reduce his support obligations to [Katherine]."

¶ 57 The order stated that "[Katherine] shall be responsible for all expenses re: the marital residence," but the trial court interpreted the order to mean that Katherine was responsible for minor household expenses such as utilities, while William still was responsible for the mortgage. The court reasoned that, without an express written reference to the mortgage, no one could have intended for Katherine to pay it because her monthly support of $2,730 would not have covered it.

¶ 58 On appeal, William argues that the January 22, 2014, agreed order unambiguously stated that Katherine was to pay "all expenses," which would necessarily include the mortgage payments, foreclosure costs, and real estate taxes. William petitioned to modify the September 18, 2012, agreed order which had assigned the mortgage to William and the utilities to Katherine. In this context, the parties modified the terms, agreeing unambiguously that Katherine "shall be responsible for all expenses." By interpreting "all expenses" to exclude the mortgage debt, foreclosure costs, and real estate taxes so that William shall remain responsible

for them, the court improperly read into the contract a term that was not articulated by the parties. The plain and ordinary language of the agreed order made Katherine responsible for the mortgage debt, and her failure to fulfill her obligation resulted in foreclosure expenses for which she also must be held responsible. See *In re Marriage of Lewin*, 2018 IL App (3d), 170175, ¶¶4-6 (where parties to a dissolution proceeding agree that, with one exception, one spouse "shall be responsible for all expenses, debts, and obligations" arising from ownership of martial residence, trial court did not err in finding that the provision was unambiguous and included mortgage obligation).

¶ 59 Under our interpretation of the agreed order, which we review as a matter of law, William's support obligation increased beginning in May 2013 by $1,130 per month while Katherine became responsible for $2,272 in mortgage and insurance payments for the residence, plus real estate taxes of an undetermined amount. The net result was to shift at least $1,142 in monthly expenses to Katherine. We note that the January 22, 2014, order made Katherine responsible for the marital residence expenses and her auto expenses from "January 1, 2014, to date, with retroactive adjustment to May 2013." At first blush, this time provision appears ambiguous, but reading the order as a whole shows that the parties intended all of the financial modifications to apply retroactively to May 2013.

¶ 60 The trial court disregarded the unambiguous language of the agreed order based on a concern that Katherine's income would not support the mortgage. But the court focused on Katherine's monthly finances without also considering William's. In fact, the September 18, 2012, order required William to pay $1,600 in support, and the January 22, 2014, order *increased* his total monthly support obligation to $2,730. One can hardly imagine why a spouse petitioning to reduce support would agree to an increase without relief from another financial obligation,

like the mortgage. After paying $2,730 in monthly support, William would have only $2,405 in net income to pay the mortgage, homeowner's insurance, real estate taxes, and his own residential expenses. Perhaps Katherine's acquiescence to her own residential debt might be explained by the $90,000 in support provided by her parents to cover any deficiency, but we need not consider the parties' motivations in light of the unambiguous contract term.

¶ 61 D. Statutory Guidelines

¶ 62 Finally, William argues that the trial court erroneously deviated from the statutory guidelines in calculating maintenance and child support. Katherine concedes that the amount of child support and amount and duration of maintenance deviate from the guidelines, but she argues that the deviations were deliberate and supported by the evidence of William's income. In light of the need for further proceedings to remedy the issues of alleged stock market dissipation and martial residence expenses, we direct the trial court on remand to revisit maintenance and child support. The court should recalculate the appropriate amounts and duration or explain its deviations from the statutory guidelines.

¶ 63 III. CONCLUSION

¶ 64 For the preceding reasons, we affirm the trial court's finding that William's trust disbursements qualify as income and vacate the rulings that William dissipated marital funds through the marital 401(k) investments and that William was responsible for the mortgage, foreclosure, and real estate taxes related to the marital residence. On remand, the trial court should also address how the maintenance and child support orders deviate from the statutory guidelines.

¶ 65 Affirmed in part, vacated in part, and remanded with directions.