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2018 IL App (3d) 170403-U

Order filed October 4, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
MYRA A. BROUGHTON,)	Tazewell County, Illinois.
n/k/a MYRA A. CALLAWAY,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0403
)	Circuit No. 10-D-423
and)	
)	
ROGER E. BROUGHTON,)	Honorable
)	Timothy J. Cusack,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in postdissolution proceedings by treating respondent's lottery winnings as income and awarding former spouse a one-time lump sum maintenance payment on that basis.

¶ 2 Petitioner Myra Broughton, n/k/a Myra Callaway, filed a petition to increase maintenance based on respondent Roger Broughton's lottery winnings of \$700,000. Respondent opposed the petition and asked the court to decrease maintenance due to his loss of employment. Following a

hearing, the trial court awarded petitioner a lump sum maintenance payment of \$127,125. Respondent appeals, claiming that the trial court erred in considering his lottery winnings as income and failed to consider his loss of employment as a substantial change in circumstances. We affirm the trial court's order instructing respondent to make a one-time lump sum maintenance payment to Myra, and we deny respondent's motion taken with the case.

¶ 3 **FACTS**

¶ 4 In July 2011, the trial court entered a judgment dissolving Myra and Roger's 18-year marriage. At the time judgment was entered, Roger was 50 years old and was employed full time with Caterpillar. Myra, who was 56 years old, was unemployed. Under the terms of the dissolution judgment, Roger was instructed to pay Myra \$1,500 in permanent monthly maintenance.¹

¶ 5 In February 2012, Myra and Roger agreed to a modified order reducing Roger's maintenance obligation to \$650 each month. Two years later, Roger filed a petition to modify maintenance to further reduce his obligation, which the trial court denied.

¶ 6 On May 16, 2016, Roger won \$700,000 playing the Illinois Lucky Day Lottery. The federal and state taxes on the winnings were \$201,249.71. Roger also paid \$75,000 in estimated income tax withholdings. Both of the federal and state estimated tax payments were subject to a potential refund in 2017 for the 2016 tax year, depending on Roger's tax filing status. His lump sum payout after taxes and estimated income tax withholding payments was \$423,749. Roger used a portion of his winnings to pay off a home mortgage of \$50,377.26 and purchase a cemetery plot and marker for \$7,000.

¹ The court determined monthly maintenance payments after applying the statutory factors as they existed in 2011 under section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West 2010)).

¶ 7 At the time Roger won the lottery, he was still working for Caterpillar and had worked for the company for more than ten years. In 2015, he made \$60,819.62 in gross wages, and in 2016, he made \$65,117.96 in gross wages. In years prior to 2016, Roger reported gross wages from other sources of income, including unemployment compensation.

¶ 8 On December 19, 2016, Roger was terminated from Caterpillar for cause. At the hearing on the petition for modification, he testified that he was fired for swearing and making threatening comments when addressing a supervisor at work. Roger's termination occurred after Myra filed her petition to increase maintenance. Following his dismissal from Caterpillar, Roger received \$437 a week in unemployment benefits.

¶ 9 Myra has chronic obstructive pulmonary disease (COPD) and has not been employed since 2009. Her dependant disabled daughter lives with her along with her minor granddaughter from another daughter. Her reported income consists of maintenance paid by Roger, social security disability insurance benefits and gambling winnings. In 2015, Myra made a one-time withdrawal of all her remaining retirement and pensions accounts to pay various living expenses. Her gross income for purposes of calculating maintenance for that year was \$28,423.

¶ 10 Shortly after Roger won the Lucky Day Lottery, Myra filed a petition to increase maintenance. In response, Roger filed a counter-petition seeking to reduce his maintenance payments in light of his unemployment. The trial court ruled in Myra's favor and awarded her a lump sum payment from the lottery winnings. In support of its ruling, the court reviewed the applicable maintenance factors under sections 504 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a); 510(a-5) (West 2016)). The court found that Roger's significant increase in income and Myra's poor health and meager station in life created a substantial change in circumstances that supported an increase in maintenance. It

ordered Roger to pay Myra a one-time lump sum maintenance payment of \$127,125, plus 30% of any refund received from the estimated tax withholdings, and left his monthly maintenance payments of \$650 undisturbed. The trial court denied Roger’s counter-petition to decrease maintenance, finding that his loss of employment was in bad faith and orchestrated to negatively impact Myra’s petition.

¶ 11 Roger filed a notice of appeal and presented an appeal bond, pursuant to Supreme Court Rule 305(a) (eff. July 1, 2004) in the amount of \$127,125, plus 30% of his 2016 tax refund and additional interest. After both parties filed briefs on appeal, Roger filed a “Motion to Expedite to Vacate Judgment for Lump Sum Maintenance Payment,” which we took with the case. In his motion, Roger informed this court of Myra’s death on April 21, 2018, and requested that we release the lump sum payment to him.

¶ 12 ANALYSIS

¶ 13 I. Consideration of Lottery Prize Award as Income

¶ 14 Roger argues that the trial court erred in considering his lottery prize winnings as “income” for the purpose of determining whether an increase in gross income is a substantial change in circumstances under the Act.

¶ 15 A maintenance order may be modified only upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a-5) (West 2016). Factors to consider in satisfying that burden are set forth in sections 510(a-5) and 504(a) of the Act. 750 ILCS 5/510(a-5); 504(a) (West 2016). In both sections, the “increase or decrease in a party’s income” is a relevant factor in determining whether a substantial change has occurred. *Id.*

¶ 16 The goal of statutory interpretation is to ascertain and give effect to the legislative intent, and the best indication of that intent is the language used in the statute. *Bigelow Group, Inc. v.*

Rickert, 377 Ill. App. 3d 165, 169 (2007). Ordinarily, the language used in the statute is the best guide to this intent. *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997). Words that the statute does not define should receive their plain and ordinary meanings, and the dictionary is one guide to these meanings. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008); *Garcia v. Nelson*, 326 Ill. App. 3d 33, 38 (2001). If the statute's language is unambiguous, we must follow it. *People v. Eidel*, 319 Ill. App. 3d 496, 502 (2001).

¶ 17 The Act does not provide an exact definition of the term “income.” For purposes of modifying a maintenance award, section 504(b-3) states that “gross income” means “all income from all sources ***.” 750 ILCS 5/504(b-3) (West 2016). The term “gross income” is also used in the modification of child support under section 505(a)(3). 750 ILCS 5/505(a)(3) (West 2016). Courts have interpreted the phrases “gross income” and “income from all sources” in relation to the modification of child support awards. See *In re Marriage of Boyden*, 164 Ill. App. 3d 385 (1987). In *In re Marriage of Boyden*, the court reviewed section 505 of the Act and upheld the trial court’s ruling that the lottery winnings of one parent and the needs of the other parent and child were substantial changes in circumstances warranting a modification of child support. In that case, the court endorsed the view that lottery winnings are income for the purpose of modifying child support. *In re Marriage of Boyden*, 164 Ill. App. 3d at 387; see also *In re Marriage of Parello*, 87 Ill. App. 3d 926, 936 (1980) (defining lottery or sweepstakes winnings as “extraordinary income” under child support provision of the Act).

¶ 18 Moreover, courts have held that an item treated as property for purposes of the distribution of marital property may be considered income after the judgment of dissolution has been finalized. See *In re Marriage of Dodds*, 222 Ill. App. 3d 99 (1991). In *In re Marriage of Dodds*, a lump sum worker’s compensation settlement received by the father was considered

income in determining an appropriate modification of his obligation to pay child support. *In re Marriage of Dodds*, 222 Ill. App. 3d at 103. Thus, although a lottery ticket acquired during the marriage may be a marital asset classified as property, a winning lottery ticket acquired after the divorce judgment becomes income for purposes of allocating support. See *id.* We therefore conclude that Roger’s lump sum lottery award is income for the purpose of Myra’s modification petition.

¶ 19 Section 706.1 of the Act, which provides for court-ordered withholding of income, bolsters our conclusion that Roger’s lottery winnings should be considered as income. Under section 706.1, orders of support under the Act are subject to the Income Withholding for Support Act (750 ILCS 28/1 *et seq.* (West 2016)). That statute provides that income means “any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, *** [and] lottery prize awards ***.” 750 ILCS 28/15(d) (West 2016). The Act’s broad definition of “gross income” paired with the specific inclusion of lottery prize awards in the Income Withholding for Support Act indicates that the legislature intended to include lottery prizes as income for purposes of determining child support and maintenance. Accordingly, the trial court did not err in determining that Roger’s lump sum lottery prize award was income in considering the petition to modify maintenance.

¶ 20 II. Substantial Change in Circumstances

¶ 21 Next, Roger argues that the court erred in applying the factors in section 510 and concluding that a substantial change in circumstances had been established.

¶ 22 Under section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act, an order of maintenance may be modified upon a showing of a substantial change in circumstances.” 750 ILCS 5/510(a-5) (West 2016). Courts in Illinois have held that “substantial change in

circumstances” as required under section 510 of the Act means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed. *In re Marriage of Neuman*, 295 Ill. App. 3d 212, 214 (1998). The party seeking modification of a maintenance order has the burden of showing that a substantial change in circumstances has occurred. *In re Marriage of Logston*, 103 Ill. 2d 266, 287 (1984). A trial court's decision to modify maintenance will not be disturbed absent a clear abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 23 In modification proceedings, the court must consider the factors in section 504, for awarding maintenance in the original divorce proceedings, as well as the factors listed in section 510(a-5), such as (1) a change in the employment status of either party and whether the change has been made in good faith, (2) the efforts made by the party receiving maintenance to become self-supporting, (3) any impairment of the present and future earning capacity of either party, and (4) the increase or decrease in the parties’ income since the prior maintenance judgment. 750 ILCS 5/510(a-5) (West 2016). No single factor is determinative in considering the duration and amount of maintenance and the trial court is not limited to reviewing the factors outlined in the statute. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008).

¶ 24 In this case, there is a significant disparity in income between the parties. Roger’s income in 2016 was more than \$450,000. Roger also testified that he used his lottery winnings to pay off his home mortgage. Whereas, Myra reported that she was still caring for her disabled daughter and her minor granddaughter and was unable to work outside the home because she suffers from COPD. She also testified that she continued to make mortgage payments on her home and that her gross income in 2015 was \$28,423. The trial court considered these facts as they related to the factors in section 510(a-5). It then examined the factors in section 504(a),

noting Myra's age, her poor health, her station in life, her sources of income and her financial struggles. In contrast, the trial court considered that Roger was 56 years old, generally healthy, employable, financially stable and had just received a significant lottery award. In light of the applicable factors, the trial court did not abuse its discretion in finding that Myra showed a substantial change in circumstances warranting a lump sum maintenance payment.

¶ 25 Roger claims that the court erred in failing to consider his loss of employment as a factor that weighed in favor of decreasing his maintenance payments. The good faith component of the employment factor in section 510(a-5) protects against payors who intentionally lose their jobs or stop working to evade financial responsibility. *In re Marriage of Kowski*, 123 Ill. App. 3d 811, 816 (1984). A spouse cannot use self-imposed unemployment as a means of avoiding maintenance when he or she has the means of earning more income. *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 970 (1992). The credibility of witnesses and the weight to be given to their testimony is for the trier of fact to decide; a reviewing court may not substitute its judgment for that of the fact finder. *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 657-58 (1992).

¶ 26 The trial court found that Roger was terminated from his position at Caterpillar based on his own actions and that he did so in bad faith. At the modification hearing, Roger testified that he was physically aggressive on the factory floor and verbally abusive to his supervisor and that he lost his job a few months after Myra filed her petition to modify monthly maintenance. The trial court was in the best position to weigh Roger's testimony. Nothing in the record suggests that the court's finding of bad faith should be overturned.

¶ 27 III. Lump Sum Payment of Maintenance Award

¶ 28 Last, Roger claims that the trial court abused its discretion in awarding a one-time lump sum maintenance payment.

¶ 29 Section 504(b-1) of the Act states that the court “shall order maintenance in accordance with [statutory guidelines]” in situations when “the combined gross income of the parties is less than \$250,000.” 750 ILCS 5/504(b-1)(1) (West 2016) (statutory guidelines require amount of maintenance calculated by taking 30% of payor’s gross income minus 20% of payee’s gross income). If, however, the parties’ combined gross income is greater than \$250,000, the court may award “[a]ny non-guidelines award of maintenance” after consideration of the relevant factors set forth in section 504(a). 750 ILCS 5/504(b-1)(2) (West 2016). Section 504(a) provides that courts “may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, and the maintenance may be paid from the income or property of the other spouse.” 750 ILCS 5/504(a) (West 2016); see *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008). The amount and duration of a maintenance award are within the discretion of the trial court. *Blum*, 235 Ill. 2d at 43. Under appropriate circumstances, maintenance in gross is an equitable concept that may be used by the trial court to award a one-time lump sum maintenance payment. See *Id.*

¶ 30 Here, as a result of Roger’s lottery winnings, the parties’ combined gross income in 2016 was greater than \$250,000. Accordingly, the trial court was not required to use statutory guidelines to craft a maintenance award. Nevertheless, the court ordered a lump sum payment of \$127,125, which is exactly 30% of the lottery prize award after taxes. See 750 ILCS 5/504(b-1)(1)(A) (West 2016) (statutory guidelines require the court to calculate maintenance using 30% of the payor’s gross income). Given the singular nature of Roger’s lottery payment, the trial court appropriately exercised its discretion in crafting a one-time lump sum maintenance payment using the statutory guideline of 30%. See *Blum*, 235 Ill. 2d at 43.

¶ 31 Roger also filed a “Motion to Vacate Judgment for Lump Sum Maintenance Payment” that was taken with the case. He argues that he is entitled to the appeal bond because his obligation to pay maintenance ended when Myra passed away. We deny Roger’s motion. The trial court awarded Myra a one-time lump sum maintenance payment in June 2017. Myra’s death in April 2018 does not alter Roger’s obligation to pay the lump sum awarded to Myra before her death.

¶ 32 CONCLUSION

¶ 33 The judgment of the circuit court of Tazewell County is affirmed. Appellant’s motion to vacate judgment for lump sum maintenance payment is denied.

¶ 34 Affirmed.

¶ 35 Appellant’s motion taken with the case denied.