

NOTICE  
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NO. 4-10-0786

Filed 6/29/11

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
WILLIAM L. HALL,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
and	)	No. 09D123
TAMARA A. HALL,	)	
Respondent-Appellant.	)	Honorable
	)	Karen E. Wall,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Knecht concurred in the judgment. Justice Pope specially concurred in part and dissented in part.

**ORDER**

*Held:* The appellate court reversed the trial court's judgment, concluding that its monthly rehabilitative maintenance award of \$1,800 was insufficient to meet the recipient's reasonable needs based on the standard of living established during the parties' marriage. In remanding, the court ordered that the trial court impose permanent instead of rehabilitative maintenance.

In September 2010, the trial court entered an order, (1) dissolving the marriage of petitioner, William L. Hall, and respondent, Tamara A. Hall, (2) disposing of their remaining ancillary issues, and (3) ordering William to pay Tamara \$1,800 per month in rehabilitative maintenance until July 31, 2013.

Tamara appeals, arguing that the trial court abused its discretion by failing to award her (1) a sufficient amount of maintenance and (2) permanent maintenance. We reverse and remand.

## I. BACKGROUND

### A. The Parties' Dissolution of Marriage

In July 1979, William and Tamara married and later had three children who are now adults. (Tamara had another child from a previous marriage who is also an adult.) In April 2009, William filed a petition for dissolution of marriage. In May 2009, Tamara filed a petition for temporary relief, requesting that the trial court order William to temporarily pay her living expenses as he had been doing since July 2008, when they separated. At a July 2009 hearing, William agreed to continue paying Tamara's living expenses, which included the following obligations: (1) the equity loan on their home; (2) health, automobile, and residential insurance; (3) medical bills and prescriptions; and (4) utilities, including gas, electricity, phone, cable, internet, water, sewer, and trash removal.

Immediately prior to the start of the July 2010 hearing on William's petition for dissolution of marriage, William and Tamara proffered their agreement to the following: (1) they would each retain their own vehicles, which were (a) paid in full and (b) of minimal value; (2) the value of the marital home was \$80,000; and (3) the value of William's three retirement plans (one defined contribution plan valued at \$31,000 and two defined benefit plans that were not valued) would be equally divided, effective the date of dissolution.

Thereafter, the trial court dissolved the parties' marriage, finding that William had proved the grounds alleged in his petition for dissolution of marriage.

### B. The Pertinent Evidence Presented Regarding Ancillary Issues

Immediately after the trial court found that grounds existed to dissolve the

marriage, William and Tamara presented the following evidence regarding the remaining ancillary issues, which primarily concerned Tamara's request for \$2,500 per month in permanent maintenance.

William testified that he was a 52-year-old pipe fitter who was in good health with no work restrictions. William recounted that after attending two years of college in 1978, he began a four-year plumbing apprenticeship. During those four years, William was not paid a salary but, instead, was supported by Tamara. Sometime thereafter, Tamara left her employment and became a homemaker. William acknowledged that during this time, which included frequent periods when he worked out of town, Tamara took care of the household and raised their children.

Although William had been laid off from his job four days prior to the hearing, he did not anticipate being unemployed for a lengthy period. William explained that after he was laid off, he was placed at the top of his union's revolving "out-of-work list." The process required William to place a bid on the union's "job line," which listed various employment opportunities within the union's jurisdiction. If William placed a winning bid on a job that lasted more than seven calendar days, he would be recycled to the bottom of the out-of-work list. William opined that it was sometimes advantageous to forgo short-term employment, as he had done in 2009, if a longer-term job was anticipated. At the time of the hearing, William had yet to (1) file for unemployment compensation or (2) bid on a job but noted that the union's listing contained a specific company offering long-term employment, where opportunities were always available.

William's hourly wage was \$33.31, which did not include benefits such as health

insurance and contributions to his pension. William acknowledged that his wage and tax statements, as well as his federal tax returns, showed the following annual gross earnings: (1) \$71,973 in 2006; (2) \$85,189 in 2007; (3) \$87,000 in 2008; and (4) \$56,427 in 2009--of which \$19,427 was unemployment compensation. In addition, William acknowledged that his July 2010 updated financial statement showed that (1) as of June 27, 2010, his gross income for 2010 was \$36,695 and (2) between July 2009 and June 2010, he paid \$1,375 per month toward Tamara's living expenses. (The record shows that Tamara's counsel incorrectly calculated William's 2010 gross income through June 2010 at \$32,000 and referred to this figure when questioning William about that income.)

William further testified that (1) the parties' joint credit card balance was \$6,515; (2) the home equity loan on the marital residence was \$67,800; (3) his personal checking and savings accounts each had a \$200 balance; (4) he failed to provide Tamara with half of a \$1,000 federal tax refund and \$200 state refund he received for 2009; (5) Tamara is entitled to half of both his defined benefit plans, which he estimated would be (a) \$250 a month from one pension and (b) a lump-sum payment of \$1,332 when he becomes 62 years old; (6) that he received \$19,427 in unemployment compensation in 2009 because (a) he was waiting to bid on a anticipated longer-term job that was cancelled twice and (b) "it was a bad year"; and (7) he currently lived with his daughter and son and was paying (a) his daughter's school loans and (b) the car insurance for his daughter and son.

Tamara testified that she was 52 years old and was living in the marital home she had shared with William, which she described as a four-bedroom house with approximately 1,500 square feet of living space. Shortly after her marriage to William, Tamara began working

as a grocery store cashier but quit her job two months later when she and William agreed that she would become the homemaker for the family. Tamara acknowledged that William's employment provided the primary source of her family's income but stated that from 1981 through 1986, she contributed between \$50 to \$80 per week through baby-sitting, selling beauty products, or cleaning homes. In the late-1980s, Tamara also worked as a secretary for about a year.

Sometime around 1990, Tamara enrolled in college to obtain a nursing degree but abandoned that effort a year later because she could not simultaneously continue her studies and care for her four children. In 1999--after working briefly as a billing clerk and four years in a floral shop--Tamara obtained employment as a hospital secretary. In 2000, Tamara sought medical attention because she began experiencing back pain, and in 2001, she stopped working because of that pain. In 2002, Tamara returned to the hospital as a part-time receptionist, but she eventually stopped working in 2006 due to increased back pain.

Tamara explained that she could not sit, stand, or move about for prolonged periods of time due to a diagnosed degenerative disk disease known as fibromyalgia, which caused her to use a walker for a brief period. Tamara returned to secretarial work in March 2008, but she stopped working in June 2008--just prior to her separation from William--because she was hospitalized for chest pain, high blood pressure, and back pain.

In August 2009, Tamara returned to work as a personal aide for a grade school, netting \$500 every two weeks but was dismissed from that job effective August 31, 2010, because of a reduction in workforce. Although Tamara stopped receiving a paycheck in May 2009, her health-care insurance remained in effect through August 2010. Tamara noted that for \$580 a month, she could extend that health-care coverage for an additional 18 months, which

she intended to do. Since her dismissal, Tamara's sole income came from working as a church treasurer, which garnered her about \$12 each week.

Tamara acknowledged that William had been contributing \$1,375 toward her living expenses but noted that monthly sum did not cover her food, clothing, gasoline, and car maintenance expenses. In addition, Tamara was concerned that her 1998 vehicle, which had 187,000 miles, would not last much longer.

In April 2010, Tamara received a notice, approving her application for social security disability. In June 2010, Tamara received \$14,250, which represented the monthly benefits due from June 2007 through August 2009, when the administration determined that her disability had ended. Tamara (1) did not inform William of this payment and (2) testified that only \$2,000 of the disability funds remained.

Tamara explained that she spent the majority of the disability proceeds as follows: (1) \$1,425 to her church because the church (a) paid a total of \$2,400 to get her automobile repaired on two separate occasions and (b) provided her with groceries from its food pantry on a weekly basis; (2) \$1,250 to her father to partially repay a \$2,000 loan she used to defray expenses in connection with a second medical opinion in North Carolina; (3) \$4,100 to her mother to repay a loan she used to retain her attorney; (4) \$338 toward the balance of a department store credit card; (5) \$556 in various attorney fees; (6) \$367 for clothing; (7) \$313 to repair her hot tub, which she used to relieve her back pain; (8) \$717 in miscellaneous birthday and wedding gifts; (9) \$283 in household expenses; and (10) \$1,371 in miscellaneous expenditures, which included vehicle preventive maintenance and veterinary expenses.

Tamara also testified that before her separation from William, they (1) took yearly

vacations, (2) dined out at least twice a week, and (3) would often redecorate the home. Tamara noted that with the exception of the rare occasion she ate out with church members, she has been financially unable to engage in the aforementioned activities since her separation from William.

Tamara noted that (1) she planned to apply for unemployment benefits after her tenure with the school district officially ends in September 2010; (2) she did not know how much she would receive in benefits; (3) she did not know whether the school district would rehire her; (4) the financial gifts she made from the proceeds of her disability check were voluntary; (5) she did not use any of the disability money to pay down the parties' \$6,515 credit card balance because she was not receiving that bill; (6) she was actively seeking any type of employment although her skills were confined to secretarial or clerical work; and (7) despite taking medications for her various medical ailments, she was capable of undertaking full-time employment.

In addition to her testimony, the trial court admitted into evidence, without objection, the affidavit of Dr. Timothy H. Horner, Tamara's treating physician of 10 years. Horner diagnosed Tamara with obesity, depression, hypertension, chronic low back pain, gastroesophageal reflux disease, nocturnal leg cramps, and severe knee arthritis. Horner explained that Tamara's arthritis is a painful, permanent condition that will limit her ability to walk, bend her knee, climb stairs, and stand in any one spot for any length of time and would not get better over time. However, Horner opined that Tamara (1) could return to work full time provided the employment did not require a great deal of moving and (2) would require (a) medical treatment for her aforementioned medical conditions and (b) pain medication for her knee and back problems for the remainder of her life.

During William's closing argument, he informed the trial court that despite the

parties' original agreement to sell the marital home, his current position was that the home should be awarded to Tamara and the court should consider the available equity in crafting the appropriate judgment. During Tamara's closing argument, she asked for permanent maintenance of \$2,500 per month.

### C. The Trial Court's Judgment as to Ancillary Issues

Two days after the hearing, the trial court entered a letter order, dissolving the marriage and awarding Tamara (1) half of William's retirement benefits and her 1998 car; (2) ownership of the marital home, which included sole responsibility for the home equity loan, insurance, maintenance, and a 2010 property tax bill of \$1,875; (3) the \$14,250 disability benefit; and (4) maintenance of \$1,800 per month. The court also awarded William his (1) share of his retirement benefits, (2) 1997 vehicle, (3) \$1,200 tax refund, (3) bank deposits of \$400, and (4) miscellaneous personal property. William was also financially responsible for the \$6,515 credit card balance.

The trial court provided the following rationale for its determination that William pay Tamara \$1,800 per month in rehabilitative maintenance until July 31, 2013:

"[Tamara] is claiming permanent maintenance from [William] of \$2,500 per month pursuant to Section 504(a) of The Illinois Marriage and Dissolution of Marriage Act [(750 ILCS 5/504(a) (West 2008))]. William] conceded that some form of maintenance is appropriate based upon the duration of this marriage, 31 years, and the disparity of income and earning capacity between the parties, but argues for a three-year period of rehabilita-

tive maintenance.

The court has considered the relevant factors of Section 504(a), and agrees that maintenance is required. However, the court has \*\*\* awarded a larger portion of the property to [Tamara], specifically[,] the marital residence and all equity, the entire Social Security Disability Award of \$14,000.00 plus, and assigned the major marital debt of \$6,500.00 to [William]. Although [William] earns more than [Tamara], he is currently unemployed, and there are many uncertainties concerning [Tamara's] status; whether she returns to work August 31st, her health, and she has maintained herself for the past two years with the temporary support of \$1,375.00 per month from [William] that included \$150.00 for the [Credit] Card debt. [Tamara's health-care] insurance coverage, if necessary, will be under \$600.00 per month, and due to the uncertainties, the court agrees with [William] that the maintenance award should be reviewable rehabilitative maintenance for a three-year period, with a requirement that [Tamara] make a good faith effort to obtain full-time employment status, which her medical evidence reveals she is capable of performing."

(In his letter order, the trial judge directed William to prepare a judgment of dissolution of marriage consistent with his order, which was signed in September 2010 by another trial judge because the original trial judge had since retired.)

This appeal followed.

## II. ANALYSIS

Tamara argues that the trial court abused its discretion by failing to award her (1) a sufficient amount of maintenance and (2) permanent maintenance. We address Tamara's arguments in turn.

### A. The Applicable Statute and Standard of Review

Section 504(a) of the Act, provides that a trial court may grant a temporary or permanent maintenance award after consideration of all of the following factors:

- "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;
- (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
- (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

- (6) the standard of living established during the marriage;
- (7) the duration of the marriage;
- (8) the age and the physical and emotional condition of both parties;
- (9) the tax consequences of the property division upon the respective economic circumstances of the parties;
- (10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;
- (11) any valid agreement of the parties; and
- (12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2008).

In considering the aforementioned factors, the trial court is not required to give them equal weight so long as the court strikes a balance that is reasonable under the circumstances. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543, 548 (2010). "An award of maintenance is within the sound discretion of the trial court and should not be reversed unless it constitutes an abuse of discretion or is against the manifest weight of the evidence." *In re Marriage of Drury*, 317 Ill. App. 3d 201, 204, 740 N.E.2d 365, 367 (2000).

## B. The Trial Court's Maintenance Award

### 1. *The Sufficiency of the Trial Court's Maintenance Award*

Tamara argues that the trial court abused its discretion by failing to award her a sufficient amount of maintenance. We agree.

"The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of the standard of living established during the marriage." *Nord*, 402 Ill. App. 3d at 293, 932 N.E.2d at 548 (quoting *In re Marriage of Culp*, 341 Ill. App. 3d 390, 398, 792 N.E.2d 452, 459 (2003)).

The trial court explained its award of \$1,800 per month in rehabilitative maintenance by finding, in part, that (1) William's average annual income was \$60,000 and (2) Tamara (a) had no work restrictions and (b) was capable of working on a full-time basis. In addition, the court noted that (1) it awarded Tamara a larger portion of the marital property, which included the \$14,250 disability payment of which \$2,000 remained; (2) it required William to assume the parties' \$6,515 credit card debt; (3) William was unemployed; (4) Tamara's future employment and health were uncertain; and (5) that Tamara has "maintained herself for the past two years with the temporary support of \$1,375" per month. However, the record does not support the court's findings.

In this case, the record shows that from 2006 through 2009, William's average gross annual income was \$75,148, which he was projected to repeat in 2010 as evidenced by (1) his claim that he did not expect to remain unemployed for "too long" and (2) his ability to earn \$36,695 for the first half of that year despite working for three different companies during that time. In addition, contrary to the trial court's finding, Tamara had significant medical restrictions that would, at a minimum, affect the type of employment she could obtain and, by extension, the prevailing wage she could earn.

More important, we disagree with the trial court's finding that Tamara had "maintained herself for the past two years with the temporary support of \$1,375." Tamara

testified that William's monthly payments of \$1,375 between July 2009 through June 2010 covered only a portion of her living expenses. Indeed, during that time, Tamara (1) received additional financial support from her family and church for her living expenses, (2) sought weekly assistance from her church to supplement her needs, and (3) did not experience any semblance of the standard of living she had enjoyed prior to her separation from William.

Moreover, contrary to Williams claims, such a situation would not have been alleviated by the trial court's increase in rehabilitative maintenance to \$1,800 per month given that Tamara (1) was currently unemployed and (2) incurred an addition expense of \$580 per month to partially defray her medical and prescription expenses, which her physician noted would persist for the rest of her life. In addition, although the court awarded Tamara her social security disability award--of which \$2,000 remained--and the marital home, Tamara is not required to deplete assets in order to maintain a reasonable standard of living. See *Drury*, 317 Ill. App. 3d at 207, 740 N.E.2d at 369 ("A spouse seeking maintenance should not be required to sell assets or impair capital to maintain herself in a manner commensurate with the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet both his needs and the needs of his former spouse").

Here, the proof of income William submitted with his July 2010 updated financial statement showed that during the first half of 2010, William's (1) net pay averaged \$4,706 per month and (2) living expenses--minus the contributions he had been making to Tamara--averaged \$2,524 per month. Thus, according to his financial statement, William's net disposable income was \$2,182.

In this regard, we conclude that the trial court's award of \$1,800 per month was

an abuse of discretion, given that the record shows (1) the 31-year marriage was of significant duration; (2) during those 31 years, Tamara provided William the opportunity to advance his career through her contributions to the family; (3) a substantial disparity exists in the present and future earning capacities of the parties; (4) Tamara would not have been able to enjoy a standard of living similar to the one she experienced during the marriage; (5) Tamara's temporary financial needs are significant in light of her age, employment skills, current medical condition, and physical limitations; and (6) William is able to contribute to Tamara's needs while still fulfilling his own.

## *2. The Trial Court's Award of Rehabilitative Maintenance*

Tamara argues that the trial court abused its discretion by failing to award her permanent maintenance. We agree.

"As a general rule, [m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652, 895 N.E.2d 1025, 1038 (2008) (quoting *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708, 850 N.E.2d 880, 886 (2006)). A permanent maintenance award is appropriate in circumstances where a spouse has devoted significant time to raising a family in lieu of pursuing a career. *Heroy*, 385 Ill. App. 3d at 652, 895 N.E.2d at 1039.

In this case, the trial court abused its discretion by awarding rehabilitative maintenance for a three-year term. Here, the record shows that throughout their 31-year marriage, Tamara supported William's career ambitions and was primarily responsible for taking

care of their children as the homemaker, foregoing a possible nursing career in that pursuit. During that time, William supported their family by advancing his career. As we previously noted, although Tamara was willing, able, and actively pursuing full-time employment to support her future needs, she developed significant and permanent medical restrictions that would, at a minimum, affect the type of employment she could obtain, which would be confined to clerical or administrative work, and as a result, the prevailing wage she could earn. More important, Tamara's employment potential and permanent physical limitations would not afford her the opportunity to maintain the standard of living she enjoyed during her marriage to William.

Accordingly, we reverse the trial court's maintenance determination. Because we agree with the court that at the time the court entered its judgment as to rehabilitative maintenance, many uncertainties concerning the parties' status existed, we remand with directions that the court determine the appropriate permanent maintenance award in accordance with section 504(a) of the Act.

### III. CONCLUSION

For the reasons stated, we reverse the trial court's award of maintenance and remand with directions that the court redetermine the appropriate permanent maintenance award in accordance with section 504(a) of the Act.

Reversed; cause remanded with directions.

JUSTICE POPE, specially concurring in part and dissenting in part:

I agree with the majority's finding Tamara needs permanent, rather than rehabilitative, maintenance. However, considering the standard of review, I am unable to find the trial court abused its discretion in setting maintenance at \$1,800 per month.

"As a general rule, 'a trial court's determination as to the awarding of maintenance is presumed to be correct.'" *Heroy*, 385 Ill. App. 3d at 650, 895 N.E.2d at 1037 (quoting *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063, 838 N.E.2d 310, 314 (2005)). The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it was an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189. In my opinion, considering the evidence before the trial court, I would not conclude the court abused its discretion in setting maintenance at \$1,800 per month.