

FIRST DIVISION  
March 5, 2012

No. 1-11-0922

Notice: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In re Marriage of Carrie Marks,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
Petitioner-Appellee,	)	
	)	
v.	)	No. 91 D 13722
	)	
William H. Marks,	)	
	)	Honorable Veronica B.
Respondent-Appellant.	)	Mathein,
	)	Judge Presiding.

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JUSTICE KARNEZIS delivered the judgment of the court.  
Justices Hall and Rochford concurred in the judgment.

ORDER

- ¶ 1 *HELD:* The trial court's maintenance award and award of attorney fees was reversed and the cause remanded for a new evidentiary hearing where the court's determination on remand was based on evidence in the record that was not current.
- ¶ 2 Respondent William Marks (William) appeals from the trial court's March 21,

2011, order in which the court awarded petitioner Carrie Marks (Carrie) \$8,400 a month in permanent maintenance as well as attorney fees. On appeal, William contends that the trial court's order was erroneous and the cause should be remanded to another trial judge. For the following reasons, we reverse the court's order and remand the cause to the trial court for a new evidentiary hearing.

¶ 3 Background

¶ 4 Since this is the third time this case has come before this court, we will set forth its procedural history in brief. William and Carrie were married in 1983 and divorced in 1994. At that time, the trial court awarded Carrie \$11,000 per month in temporary maintenance. In 2001, the court awarded Carrie \$9,000 per month in permanent maintenance. William appealed the court's award and we affirmed. *In re Marriage of Marks*, Nos. 1-01-4048 and 1-02-0074 (consolidated) (unpublished under Supreme Court Rule 23) (March 20, 2003).

¶ 5 In 2006, William brought a petition to terminate Carrie's maintenance. The court held a hearing on the petition in January 2009, in which it heard testimony regarding the parties' assets, incomes and expenses. After the hearing, the court awarded Carrie \$8,400 a month in permanent maintenance and ordered William to contribute to Carrie's attorney fees. William appealed the court's order and we reversed and remanded the cause to the trial court. *In re Marriage of Marks*, No. 1-09-1239 (modified order upon rehearing) (unpublished under Supreme Court Rule 23) (October 19, 2010).

¶ 6 On March 21, 2011, after hearing argument on remand, the court entered an

order awarding Carrie \$8,400 per month in permanent maintenance and ordering William to contribute to Carrie's attorney fees, the exact same award it had entered in 2009. It is from this order that William now appeals.

¶ 7 Analysis

¶ 8 In our 2010 order, *In re Marriage of Marks*, No. 1-09-1239, we reversed the court's award of maintenance and attorney fees, and directed the court on remand to reconsider both the maintenance award and award of attorney fees. We found that the record did not support the trial court's finding that William had sufficient funds to pay Carrie's maintenance award. The transcript from the hearing on remand indicates that there was some confusion over that order. Specifically, the order stated, "we reverse the court's award of maintenance and remand the cause to the [trial] court. Upon remand, we direct the court to consider William's additional contention that he does not have sufficient funds to contribute to Carrie's attorney fees." The transcript in the record, which is only a partial transcript of the hearing, indicates that William argued to the court on remand that our 2010 order reversed the maintenance award outright and only remanded the cause to the trial court to consider the issue of attorney fees. The trial court correctly rejected William's misinterpretation and reconsidered both the maintenance award and award of attorney fees.

¶ 9 However, we realize that we should have made our order remanding the cause more specific. We failed to provide the court with specific guidance when we asked it to reconsider both the maintenance award and award of attorney fees. When the trial

court on remand only heard argument and no new evidence, its reconsideration of its order was based on evidence that was at least several years old. Upon remand, the trial court considered evidence regarding the parties' 2008 tax returns and 2008 disclosure statements, as well as previous testimony regarding Carrie's mental health from a 2001 hearing. By not using current information to reconsider its order upon remand, we do not believe the trial court could come to an equitable result. What follows below is our holding with specific instructions to the court.

¶ 10 We reverse the trial court's March 21, 2011, order and remand the cause to the trial court for a new evidentiary hearing. We note that pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. February 1, 1994), the appellate court may make any "further orders \* \* \* that the case may require." Therefore, upon remand, we direct the trial court to conduct a new evidentiary hearing where the court can examine the parties' current financial conditions and personal circumstances and then determine based on the parties' assets, incomes and expenses, an appropriate maintenance award and award of attorney fees. As noted above, the evidence upon which the court last based its decision is several years old. A new evidentiary hearing on the parties' current situations, both economic and personal, is necessary for the court to come to a just and equitable resolution of this matter.

¶ 11 Further, there is no need to remand the cause to a different trial judge. A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *Raintree Homes, Inc. v. Village of Long*

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*Grove*, 209 Ill. 2d 248, 262 (2004). Respondent's allegations that the trial court's order was erroneous on remand are insufficient to overcome the presumption of impartiality.

¶ 12 Accordingly, we reverse the trial court's order and remand the cause for a new evidentiary hearing to determine an appropriate award of maintenance and award of attorney fees.

¶ 13 Reversed, cause remanded with directions.