

No. 1-13-1056

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE MARRIAGE OF GALOWICH)	Appeal from the Circuit Court of
)	Cook County
JONI SANTINI GALOWICH n/k/a)	
JONI SANTINI,)	No. 03 D 12638
)	
Petitioner-Appellee,)	
)	Honorable LaQuetta
v.)	Hardy-Campbell,
)	Judge Presiding
JEFFREY GALOWICH,)	
)	
Respondent-Appellant.)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Pierce concur in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion when it modified respondent's maintenance obligation in light of finding that petitioner failed to make a good faith effort to seek employment.

¶ 2 Respondent Jeffrey Galowich appeals an order from the Circuit Court of Cook County denying his petition to terminate maintenance, but modifying the amount of his obligation. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 2, 1989, petitioner Joni Santini ("Santini") married respondent Jeffrey Galowich ("Galowich"). The parties were married for 14 years before Santini filed a petition for dissolution of marriage in the Circuit Court of Cook County in 2003. Those proceedings were resolved by the entry of a judgment for dissolution of marriage on October 27, 2008. The dissolution judgment provided, among other things, that Galowich was required to pay maintenance to Santini in the amount of \$10,000 per month. On September 30, 2011, Galowich filed a petition to terminate maintenance. The trial court entertained written arguments on the petition and held a three day trial on the matter. In a 25 page written order, the trial judge found that a substantial change in circumstances warranted a modification of Galowich's maintenance obligation. The judge reduced the required maintenance payment by \$2,500 for a new total of \$7,500 per month and also retroactively modified the obligation, ordering Santini to pay \$42,500 in arrearages. The trial judge also ordered that the maintenance obligation be reviewed in four years. Galowich appeals arguing that, based on the trial court's findings of fact, it abused its discretion by not terminating his maintenance obligation in its entirety.¹

¶ 5 Galowich is 53 years old and is not currently employed. He has a law degree and is licensed to practice law in both Illinois and California. Galowich is also a registered certified public

¹ Santini apparently filed a notice of cross appeal, but filed nothing else in support thereof and, thus, she has abandoned and forfeited it. See ILCS S. Ct. Rule 343; *Universal Underwriters Ins. Co. v. LKQ Smart Parts, Inc.*, 2011 IL App (1st) 101723, ¶10.

accountant. After practicing law for four years, Galowich began work at Madison Realty Group, Inc. and Initiate Systems, Inc. Madison Realty was a family business that managed commercial and residential land development projects. Initiate Systems was an enterprise software company. Between the two positions, Galowich's gross income at the time of the dissolution was approximately \$375,000. Galowich also held certain equity interests in Initiate Systems that were acquired during the course of the marriage.

¶ 6 Santini is 54 years old and is not currently employed. Santini has a Bachelor of Science degree in sociology and subsequently received a paralegal certification. Before the marriage, Santini worked as a receptionist and at two different law firms and as a paralegal. During the parties' marriage, Santini was primarily a homemaker but, early in the marriage, she worked as a salesperson for Lexis Nexis earning approximately \$50,000 per year.

¶ 7 Pursuant to the judgment of dissolution, Galowich had sole custody of the parties' two children. Santini was awarded 55 percent of the marital estate with Galowich receiving 45 percent. Included in Santini's distribution was a share of the Initiate Systems equity interests. Santini was also awarded \$10,000 a month for maintenance from which she was required to pay half of the children's expenses. Santini was also ordered to seek employment and to notify Galowich of her efforts on a monthly basis. The trial court estimated that Santini received \$1,990,937 in total assets under the dissolution order. In a subsequent decision, the trial court ordered Santini to appear before the court every three months to present a job diary detailing her efforts to gain employment.

¶ 8 In his petition to terminate, Galowich argued that his maintenance obligation should be terminated for a number of reasons, which resulted in a substantial change of circumstances. In

particular, Galowich pointed to: Santini's failure to make a good faith effort to obtain employment, the increased marketability of the Initiate equity interests which generated a higher than expected return, Galowich's own loss of employment, and the parties' overall change in income since the entry of the judgment of dissolution.

¶ 9

ANALYSIS

¶ 10 The decision to modify or terminate maintenance is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 19. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *Id.* As a general rule, a trial court's determination as to the awarding of maintenance is presumed to be correct. *In re Marriage of Heroy*, 385 Ill.App.3d 640, 650 (2008). The party seeking modification of a maintenance order bears the burden of showing a substantial change in circumstances. *In re Marriage of Waldschmidt*, 241 Ill.App.3d 7, 10 (1993).

¶ 11 The Illinois Marriage and Dissolution of Marriage Act provides that maintenance may be modified only where the moving party can demonstrate a substantial change in circumstances. *In re Marriage of Bothe*, 309 Ill.App.3d 352, 356 (1999). In determining whether to modify or terminate maintenance, Section 510(a) of the Act directs the trial court to consider:

(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 party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate; (3) any impairment of the present and future earning capacity of either party; (4) the tax consequences of the maintenance payments

upon the respective economic circumstances of the parties; (5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage; (6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property; (7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought; (8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and (9) any other factor that the court expressly finds to be just and equitable. 750 ILCS 5/510(a-5).

The trial court should also consider the same factors it considered when making the initial award of maintenance. *Bothe*, 309 Ill.App.3d at 356. Section 504(a) provides that, in making an initial award of maintenance, the trial court should consider:

(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).

¶ 12 Galowich's Change Of Employment

¶ 13 Galowich contends that his loss of employment which he alleges resulted in a reduction of income is a substantial change in circumstances warranting a termination or reduction of his maintenance obligation. A change in a party's employment status and an increase or decrease in income are both factors that the court should consider in deciding if a modification of maintenance is appropriate. See 750 ILCS 5/510(a-5)(1, 7). The trial court found that Galowich's termination of employment was in good faith and was not voluntary or done for the purpose of avoiding financial responsibility. However, the trial court found that there had been no change in Galowich's earning capacity and that there was not a substantial reduction in his income when compared with his income at the time the marriage was dissolved.

¶ 14 The testimony established that Galowich has not worked since June 2010. Galowich's employment at Madison Realty ended in 2009. Initiate Systems, Galowich's other employer, was purchased by IBM in 2010. Galowich stayed on with IBM for three months before his employment

officially ended in 2010. He has not worked since. Galowich maintains that a substantial change in circumstances has occurred because in 2011 his gross income was \$141,435, and in 2012 his gross income was \$46,475. In both 2011 and 2012, Galowich's income was almost entirely derived from the redemption of equity interests resulting from the sale of Initiate Systems to IBM.

¶ 15 When a change in employment is made in good faith, the court must still determine whether the obligor has experienced a substantial change in circumstances so as to entitle the obligor to a reduction in maintenance. *In re Marriage of Barnard*, 283 Ill.App.3d 366, 371 (1996). Here, there is record evidence that from 2008, when the dissolution order was entered, to 2012, the period that the trial judge reviewed for purposes of Galowich's maintenance obligation, Galowich's overall financial position actually improved. Despite the trial court's finding that Galowich's termination was not voluntary, the evidence adduced at trial showed that he was not actively seeking work either. So even though the termination may not have been voluntary, it does not follow that his current state of unemployment is involuntary. As we stated in *In re Marriage of Waller*, 253 Ill.App.3d 360, 365 (1993), "[w]hile we recognize that [someone responsible for paying maintenance] has a right, at some point, to retire or to substantially reduce his working hours, this will not necessarily justify a reduction or a termination in maintenance." *Id.*; see also *In re Marriage of Stephenson*, 121 Ill.App.3d 698, 700-01 (1983). In this case, the trial court found that Galowich's change in employment did not justify a termination or modification of his maintenance obligation. In addition to the financial figures, the trial court also considered the fact that Galowich retained the same earning capacity, that he has current marketable business and legal skills, and that he has no adverse health issues. There is also record evidence that Santini requires maintenance to live independently, while Galowich has adequate means to meet the

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maintenance obligations which impose no undue hardship on him. The trial court did not abuse its discretion by finding that Galowich's change in employment status was not a substantial change in circumstances.

¶ 16 The Sale Of Stock And Stock Options

¶ 17 Galowich contends that the increase in the value of the equity rights awarded to Santini upon dissolution constitutes a substantial change of circumstances. When the dissolution order was entered, the Initiate Systems' stock was considered to be not marketable. Consistent with Santini's receipt of 55 percent of the marital estate, she received 55 percent of the Initiate Systems' stock and stock options. When Initiate Systems was sold to IBM, the status of the equity interests went from not marketable to considerably liquid. In the dissolution judgment, the trial court estimated the value of the equity interests Santini would receive to be \$789,779, but the gross proceeds she received were \$2,208,601. In ruling on the petition to terminate maintenance, the trial court found that the increased value in the equity interests did not constitute a substantial change in circumstances so as to justify a termination of maintenance.

¶ 18 In determining the value of the stock so that it could evaluate the entirety of the marital estate, the trial court took evidence during the dissolution proceedings concerning the stock's value. In ruling on Galowich's petition concerning maintenance, the trial court recognized that the values assigned were "place holders" or estimates, as neither party was guaranteed a certain return. As it turned out, the equity interests substantially increased in value between the time of the dissolution and the time Galowich brought his petition to terminate maintenance. The trial court recognized this increase, but also noted that the increase inured to the benefit of both parties, and that ultimately Galowich received a greater amount of cash proceeds from the sale of stock and

stock options. The trial court also found that Santini had nearly exhausted the monies she received by paying taxes, legal fees from the divorce proceedings, and repaying loans. The trial court concluded that Galowich failed to prove that the cash Santini realized from the equity interests enabled her to live independently.

¶ 19 Nothing in the dissolution order guaranteed that either party would receive a certain amount of cash from the equity interests. The division could have worked to Santini's detriment had the cash value ultimately dropped below the valuation adduced at the hearing. This uncertainty was contemplated at the time the dissolution judgment was entered. The real question is whether the cash value realized by Santini changed her financial position in such a way that Santini's ability to support herself improved. The trial court found that it did not, and we see no abuse of discretion in that ruling.

¶ 20 Santini's Efforts To Secure Employment

¶ 21 Galowich contends that Santini's efforts to seek employment and become financially independent justify a termination of his maintenance obligation. A party receiving maintenance has an affirmative obligation to seek appropriate employment and to make a good faith effort to become financially independent. *In re Marriage of Cheger*, 213 Ill.App.3d 371, 380 (1991). A former spouse's failure to make good faith efforts to achieve financial independence can be the basis for a petition for modification pursuant to section 510(a). *In re Marriage of Mayhall*, 311 Ill.App.3d 765, 770 (2000).

¶ 22 In the order disposing of Galowich's petition to terminate, the trial judge found that: Santini had been repeatedly instructed by the court to seek employment, that Santini's efforts were "disingenuous at best and a ruse at wors[t]," and that Santini failed to make a good faith effort to

seek employment and become financially independent. As a result, the trial judge concluded that Santini's failures in this regard constituted a substantial change in circumstances. Rather than terminating maintenance, the trial judge chose to reduce and modify Galowich's maintenance obligation. Galowich maintains that this ruling was an abuse of discretion.

¶ 23 Galowich relies on *In Re Marriage of Cantrell*, 314 Ill.App.3d 623 (2000) and *In Re Marriage of Koenigsknecht*, 302 Ill.App.3d 474 (1998) for the proposition that Santini's lack of good faith to secure employment justifies a termination of his maintenance obligation. In *Cantrell*, this Court held that the trial court lacked the authority to change the form of maintenance from rehabilitative to permanent, resulting in an abuse of discretion. *Cantrell*, 314 Ill.App.3d at 624. The *Cantrell* court further held that the former wife had achieved the statutory goal of rehabilitative maintenance and, thus, that the trial court abused its discretion when it failed to grant the former husband's motion to terminate maintenance. *Id.* at 630. Here, we are concerned with permanent maintenance, not rehabilitative maintenance, so *Cantrell* is readily distinguishable. The trial judge took an award of permanent maintenance and placed conditions on it, which is opposite to *Cantrell*. Not only did the trial judge reiterate Santini's obligation to make efforts towards securing employment, the judge also reduced the amount of maintenance and ordered that the maintenance obligation be reviewed in four years.

¶ 24 In *Koenigsknecht*, the dissolution judgment stated that the maintenance award would terminate after four years. *Koenigsknecht*, 302 Ill.App.3d at 476. The trial court later extended the obligation for an additional two years and reduced the amount of the maintenance payment when it found that the former wife's efforts to become financially independent were insufficient. *Id.* at 476-77. This Court, with one justice dissenting, held that, in light of the trial court's finding that the

former wife's efforts to secure employment were insufficient, the extension of the maintenance obligation was an abuse of discretion. *Id.* at 479. Here, the award of maintenance was permanent and not limited to four years. The trial court explained in the dissolution order and in the order disposing of the termination petition that Santini was never expected to and may never be able to fully support herself. In *Koenigsknecht*, the appellate court explained that the former wife was a highly educated person and was capable of finding gainful employment. *Id.* Although Santini has a college degree, the trial court explained in the dissolution judgment that Santini "does not possess the necessary education, experience or skills to obtain a job that would enable her to earn income to support herself in the lifestyle to which she became accustomed during her marriage . . ." We find that neither *Cantrell* nor *Koenigsknecht* is determinative.

¶ 25 Instead, we find that it was within the discretion of the trial court to fashion the proper remedy based on its finding that Santini had failed to make a good faith effort to find employment or achieve financial independence. A court abuses its discretion only when no reasonable person would have taken the view adopted by the trial court. *In re Marriage of Viridi*, 2014 IL App (3d) 130561, ¶ 26. It is not for this Court to reweigh the statutory factors and, absent an abuse of discretion, we will not substitute our judgment for that of the trial court. *Id.*

¶ 26 We cannot conclude that no reasonable person could find as the trial court did. The Marriage and Dissolution of Marriage Act requires the trial court to look at a wide variety of factors to reach a just and equitable result. *Bothe*, 309 Ill.App.3d at 356. The trial judge here heard a significant amount of evidence, judged witnesses' credibility, balanced all of the equities, and determined that a modification rather than a termination was the proper result. Despite the trial judge's finding that Santini failed to exercise good faith in securing employment, it was not an

¶ 28 The Marriage and Dissolution of Marriage Act requires the trial judge to weigh a variety of factors and then determine whether a termination or modification of maintenance is justified. The trial judge held a three day trial and issued a 25 page written ruling discussing her findings of fact and conclusions of law. After balancing the equities, the trial judge determined that a modification of maintenance was the appropriate remedy, not termination. In view of the totality of the circumstances, we hold that the trial judge did not abuse her discretion in ruling on any of the particular issues raised by Galowich.

¶ 30 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 31 Affirmed.