No. 2—10—0406
Order filed April 11, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LINDA L. HAMMOND, Petitioner-Appellant, and RICHARD A. HAMMOND, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 99—D—447 Honorable Joseph J. Bruce, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: (1) Despite petitioner's assertion, the trial court did not consider an "internet article" as a substitute for the actual law; the court merely used the article to point it to the actual law, which it properly relied on; (2) the trial court did not err in awarding petitioner interest on a maintenance arrearage only as of the effective date of the statutory amendments mandating such interest; although the court previously had the discretion to award interest, it had not awarded it, and the amendments applied only prospectively.

Pro se petitioner, Linda L. Hammond, appeals from the trial court's denial of her motion for reconsideration of the trial court's order, which found that respondent, Richard A. Hammond, had paid in full a maintenance arrearage owed to petitioner pursuant to the parties' dissolution of

marriage. The trial court found that petitioner was entitled to interest on the maintenance arrearage but only as to the amount due as of January 1, 2006, the effective date of the amendments to section 504 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/504 (West 2006)), which made interest on past-due maintenance obligations mandatory. Petitioner advances two arguments on appeal: (1) that the trial court improperly considered certain evidence; and (2) that interest on the past-due maintenance obligation began to accrue not upon the effective date of the amendments to section 504 of the Marriage Act but rather when the payments were missed. For the reasons that follow, we affirm.

I. BACKGROUND

On April 15, 1999, petitioner petitioned for dissolution of her marriage to respondent. On March 20, 2001, the trial court dissolved the parties' marriage and continued the matter for a hearing on other issues. On November 19, 2002, following a hearing, the trial court entered an "Order on Remaining Issues" (the 2002 Order). The court found that "a maintenance arrearage exists in the amount of $10,325.00 established as of March 15, 2002, plus an additional $644.17 for utility bills previously ordered, for a total arrearage of $10,969.17. [Respondent] shall pay $100.00 per month towards said arrearages [*sic*], which payment shall constitute a maintenance payment for purposes of taxation." Respondent was further ordered to pay petitioner $975 per month in maintenance, "reviewable in four years," plus an additional $100 per month toward educational expenses.

On March 25, 2009, respondent petitioned to terminate and/or review maintenance based on an alleged change of circumstances. He also sought credit for all educational payments made since September 24, 2006.

On June 3, 2009, petitioner petitioned for a continuation of maintenance payments, and on July 31, 2009, she petitioned for a rule to show cause on issues not relevant to the present appeal.

The trial court held a hearing on the parties' petitions on August 5, 2009, and on September 17, 2009. The record contains a partial transcript from only the September 17, 2009, hearing. At the hearing, the court denied respondent's motion to terminate maintenance but agreed to review maintenance in one year. The court granted respondent's motion with respect to termination of the $100 monthly educational payment. With respect to the $100 monthly payment on the maintenance arrearage, the court stated: "The arrearage payment will terminate when the arrearage is paid, and I just don't know if that's been paid or not." The court continued the matter for entry of an order.

In the meantime, prior to the next court date and prior to entry of an order, both parties moved for reconsideration and clarification. Respondent's motion sought reconsideration of the court's ruling on, *inter alia*, his petition to terminate maintenance. Additionally, respondent noted the following:

> "The [2002 Order] is silent as to whether any interest was included in the calculation of the [maintenance] arrearage at the time it was entered. If interest was included in that amount, it cannot be included in the judgment interest calculation."

Petitioner argued in her motion for reconsideration and clarification, *inter alia*, that although the 2002 Order did not indicate that interest was included in the arrearage amount, she was entitled to interest in the amount of 9% per annum under section 2—1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2—1303 (West 2002)).

On January 12, 2010, the parties appeared before the court for entry of an order on their prior petitions. The court noted that, because it had not yet entered an order on the parties' prior petitions,

the parties' motions for reconsideration and clarification were premature. Nevertheless, the court stated that it would enter its order on the prior petitions and then allow the parties to argue the merits of their respective motions for reconsideration and clarification. Concerning the parties' prior petitions, the court ordered as follows on the issue of the maintenance arrearage:

> "The [respondent] shall calculate the total amount of the arrearage due as of 9/17/09 and he shall continue payment towards the arrearage of $100.00 per month until the balance is paid in full."

In arguing the motions for reconsideration, respondent's counsel stated that the 2002 Order was unclear as to whether the $10,969.17 arrearage included interest. The court agreed that the order did not so indicate and stated that, absent any evidence to the contrary, it would not find that the arrearage included interest. In response, petitioner argued that she was entitled to interest of 9% per year until the arrearage was satisfied. Respondent's counsel argued that interest did not start to accrue on the maintenance until January 1, 2006, when "the law changed." According to respondent's counsel, "The law was changed so that if there was an arrearage for maintenance different than an arrearage for child support, that as of January 1 of [20]06 the maintenance arrearage would also accrue interest at a rate of nine percent per year. Prior to that date, any payments made towards a maintenance arrearage would just apply directly to the principal." When the court asked why the payments applied only to the principal, counsel responded: "Because there was no statutory provision for interest to accumulate on that maintenance arrearage. It was there for child support, but it was not for maintenance." The court then explained to petitioner that, because the 2002 Order did not set a judgment of $10,969, interest did not apply to that amount. The court further explained:

"[Interest] wouldn't apply until a judgment was entered or until interest is established by operation of law."

At that point in the proceeding, respondent's counsel showed the trial court an "article"[1] and explained that the article "gets into how the law was changed with respect, specifically, to maintenance arrearages." The article is an "Inspector General Press Release," dated December 27, 2005, which referenced "Senate Bill 95" as "an initiative of the Illinois State Bar association, [which] provides that any new or existing order including any unallocated maintenance obligation (alimony) shall accrue simple interest at the rate of 9 percent per annum, just as child support obligations. This law is effective January 1, 2006." Press Release, Office of the Governor, Gov. Blagojevich Announces Significant Jump in Child Support Collections in 2005 (Dec. 27, 2005), http://www.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=1&RecNum=4552 (last visited Mar. 29, 2011). Senate Bill 95 became Public Act 94—89, with an effective date of January 1, 2006; it amended section 504 of the Marriage Act by adding sections 504(b—5) and 504(b—7). See Pub. Act 94—89, §5 (eff. Jan. 1, 2006) (amending 750 ILCS 5/504 (West 2006)). After looking at the article and referencing the appropriate statute, the court proceeded to explain to petitioner the statutory law concerning interest on maintenance, stating that, in 2002, when petitioner's divorce was finalized, the relevant statute "[did] not have a provision for the accumulation of interest and maintenance." The court then referred petitioner to section 504 of the Marriage Act and the relevant

[1] The "article" was not admitted into evidence; nevertheless, the trial court granted petitioner's motion to supplement the record on appeal because "the article may be relevant to arguments raised in [petitioner's] appeal."

amendments. The court explained that interest on maintenance began to accumulate under that section as of the effective date of the amendments.

Thereafter, the court accepted respondent's financial calculations, which showed that "payments made by [respondent] up through January 1 of [20]06 would be applied to principal and payments made after January 1, [20]06 would have to be applied to both principal and interest." According to respondent's counsel, the balance due on the arrearage as of January 1, 2006, was $7,045.57, and "[t]hat's where we start accruing interest at nine percent." Respondent's calculations further indicated that the total arrearage was paid in full as of November 20, 2009, and that a total of $1,445.38 had been paid in interest.

At that point, petitioner questioned the interest calculations. According to petitioner, the total interest should be closer to $2,000. She further indicated that she was not "aware of the new law." As a result, the court granted her 30 days to file a motion to reconsider the arrearage calculation and directed her to include additional calculations for the court to consider.

On February 2, 2010, petitioner filed a motion for reconsideration and clarification, arguing that the $10,969.17 arrearage was comprised of a series of missed maintenance payments and thus, under section 504(b—7) of the Marriage Act, she was entitled to interest on each overdue payment, notwithstanding the fact that the maintenance obligation became due prior to January 1, 2006. After a hearing, the trial court denied petitioner's motion. The record does not contain a transcript of the hearing.

Petitioner timely appealed. Respondent has not filed a brief. However, we may reach the merits even without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (a reviewing court should decide the merits of an appeal where the

record is simple and the claimed error is such that a decision can be made easily without the aid of an appellee's brief).

II. ANALYSIS

On appeal, petitioner argues: (1) that the court erred in allowing respondent's "internet article *** [to] substitute for an actual law or statute" without giving petitioner "adequate and sufficient opportunity to research this new statue [*sic*]"; and (2) that, based on the "incomplete and fragmented internet article," the court erred in assessing interest.

Initially, we reject petitioner's argument concerning the court's "improper" consideration of the article. As noted, the article merely referenced Senate Bill 95, which ultimately became Public Act 94—89, the act that amended section 504 of the Marriage Act by adding sections 504(b—5) and 504(b—7). During the proceedings, the court acknowledged the article and noted that it directed the court to the relevant statute. The court appropriately referenced and relied upon the relevant statute. Further, the court granted petitioner 30 days to file a motion to reconsider its ruling, and thus she had ample opportunity to argue the applicability of the statutory language.

Next, petitioner takes issue with the trial court's holding that interest on the maintenance arrearage began accruing on January 1, 2006, the effective date of the amendments to section 504 of the Marriage Act. According to petitioner, she is entitled to "the entire amount of interest on maintenance." Her brief is far from a model of clarity. At one point she argues that she is entitled to interest on maintenance from November 19, 2002; at another point she maintains that she is entitled to interest from the date of the first missed maintenance payment in 1999. We will address each argument in turn.

First, petitioner maintains that she is entitled to interest from November 19, 2002, the date the trial court entered the 2002 Order. Petitioner argues that "[i]nterest on maintenance existed for as long as the last century," and she relies on *In re Marriage of Harding,* 180 Ill. 592 (1899), and *In re Marriage of Ellingwood v. Ellingwood*, 25 Ill. App. 3d 587 (1975). While we agree that, when it issued the 2002 Order, the trial court certainly had the discretion to order that interest be paid on any overdue maintenance obligation (see *In re Marriage of Berto*, 344 Ill. App. 3d 705, 719-720 (2003) (trial court has the discretion to order interest on maintenance)), it is clear that, in this case, no such order was made. Thus, this argument fails.

Second, petitioner argues that she is entitled to interest beginning with the first missed maintenance payment in 1999, pursuant to sections 504(b—5) and 504(b—7) of the Marriage Act. Section 504(b—5) provides:

> "Any maintenance obligation including any unallocated maintenance and child support obligation, or any portion of any support obligation, that becomes due and remains unpaid shall accrue simple interest as set forth in Section 505 of this Act." 750 ILCS 5/504(b—5) (West 2008).

Section 504(b—7) provides, in relevant part:

> "Any new or existing maintenance order *** shall be deemed to be a series of judgments against the person obligated to pay support thereunder." 750 ILCS 5/504(b—7) (West 2008).

As noted, sections 504(b—5) and (b—7) became effective on January 1, 2006. Nevertheless, according to petitioner, "[t]he arrearage on maintenance began to accrue in 1999, which ma[kes] this case an existing case" under the provisions. The trial court found that petitioner was entitled to interest on the existing arrearage as of January 1, 2006, the effective date of the provisions. Thus,

the court did apply the statute to the existing order. For petitioner to be entitled to interest on payments that were overdue but paid prior to the effective date of the amendments (which is essentially what petitioner seeks), we would have to apply the statutory amendments retroactively. However, petitioner makes no argument at all concerning the retroactivity of this statute. "[S]tatutes and amendatory acts are presumed to operate prospectively unless the statutory language is so clear as to admit of no other construction. [Citations.] One of the exceptions to this general rule is that statutes or amendments which relate only to remedies or forms of procedure are given retrospective application. [Citation.]" *People v. Theo*, 133 Ill. App. 2d 684, 687 (1971). More specifically, our supreme court has held that statutory changes in interest rates are to be applied prospectively from the effective date of the amendment. See *Noe v. City of Chicago*, 56 Ill. 2d 346, 350 (1974); see also *Charter Bank & Trust of Illinois v. Edward Hines Lumber Co.*, 233 Ill. App. 3d 574, 581 (1992). Petitioner's argument that she is entitled to interest on payments that were overdue but actually paid prior to the effective date of the statute, with no supporting authority other than citations to cases for general propositions of law, is insufficient to convince us to apply the statute retroactively. See *County of McHenry v. Thoma*, 317 Ill. App. 3d 892, 892 (2000) (reviewing court is not a repository into which an appellant can dump the burden of research).

III. CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court of Winnebago County.

Affirmed.