2011 IL App (2d) 101019-U
No. 2-10-1019
Order filed December 30, 2011



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| GAIL LYNN ARRENHOLZ-ROBERTS, | ) | Appeal from the Circuit Court |
| | ) | of Kane County. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 04-D-570 |
| | ) | |
| THOMAS W. ROBERTS, | ) | Honorable |
| | ) | Joseph M. Grady, |
| Respondent-Appellant. | ) | Judge, Presiding. |

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JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

**ORDER**

*Held*: Trial court's finding that wife made a good faith effort to rehabilitate herself in light of her mental problems was not against the manifest weight of the evidence. We remand with directions that the trial court determine when maintenance would terminate or be reviewable consistent with the terms of the marital settlement agreement. Based upon the incomplete record regarding the issue of attorney's fees the issue is forfeited the award of fees to wife is affirmed.

¶ 1 Respondent, Thomas W. Roberts appeals the trial court's award of continued and increased maintenance and attorney fees in favor of petitioner, Gail Lynn Arrenholz-Roberts. Respondent argues that the trial court erred by: (1) finding that petitioner made a good faith effort to rehabilitate

herself; (2) ordering respondent to pay maintenance for an unlimited time; (3) increasing respondent's maintenance obligation; and (4) ordering respondent to pay an additional $7,500 towards petitioner's attorney fees. We affirm in part, and remand in part.

¶ 2 I. BACKGROUND

¶ 3 The parties were married in 1982. A son was born to the marriage when petitioner was 36 years old. Prior to the marriage, in 1972, petitioner earned a bachelors degree in nursing and, in 1978, a master of arts degree in psychology. She obtained her license in Illinois to work as a registered nurse in 1972. Before the parties' marriage, petitioner worked for a few months at a hospital, studied psychodrama, participated in the Peace Corps in Honduras, worked at a chemical dependency clinic, developed educational television programs regarding substance addiction, taught psychodrama, worked parttime as a nurse at a mental health facility, operated the Berkshire Counseling Center—which practiced psychodrama—and was involved in therapy with drug-addicted children while working at a children's hospital. When the parties married in 1982, and for a period shortly thereafter, petitioner worked as a psychiatric specialist at a health facility.

¶ 4 Shortly after the parties married, they moved to St. Louis due to respondent's job. In 1984 their son, Nathan, was born and petitioner left the job market to become a stay-at-home wife and mother. Petitioner participated at Nathan's school as a part-time teacher's aide, accompanied respondent on business trips and supported him while he attended Washington University, where he received his masters in business administration degree in 1994. In 1995 the parties moved again due to respondent's employment, this time, to the Chicago area. Petitioner occasionally worked at art galleries and as a camp nurse at the summer camps Nathan attended. In 2002 petitioner sought to obtain a certificate in nurse-midwifery by attending a nursing refresher course at a university and

enrolling in a midwifery school. She stopped attending because it caused problems for her family and required her to participate in births in dangerous areas in Chicago.

¶ 5 In 2003 the parties' only child, Nathan, committed suicide, causing petitioner great emotional trauma. In addition, just prior to the entry of the judgment of dissolution in 2006, petitioner's father died.

¶ 6 On January 9, 2006, the trial court entered a judgment of dissolution, dissolving the parties' marriage. A marital settlement agreement (MSA) was incorporated into and made part of the judgment. Regarding maintenance, the marital settlement agreement provided the following:

> "3.2 **Permanent Maintenance.** Husband shall pay Wife for modifiable and reviewable maintenance, the sum of Three Thousand Dollars ($3,000) per month, commencing on January 1, 2006, and payable each succeeding month thereafter by[,] on[,] or before the 5th of each month. The payment of such maintenance shall terminate absolutely upon the occurrence of any of the following:
>
> * * *
>
> v. The payment of 36 monthly payments of maintenance unless the Wife files a petition to review as described in subparagraph 3.4."
>
> * * *
>
> "3.4 **Maintenance is reviewable.** The payment shall terminate unless Wife shall file a petition asking the Court to review maintenance on or before January 1, 2009. The Court, at said hearing, shall first determine if Wife has made a good faith effort to economically rehabilitate herself. If Wife has been economically rehabilitated, the Court shall terminate maintenance. If she has not been economically rehabilitated, despite making

a good faith effort to do so, the Court may adjust maintenance, either by increase or decrease, or continue it at the same level, depending on the economic circumstances of the parties."

¶ 7 On September 9, 2008, petitioner filed a petition to review maintenance, "as described in sub paragraph 3.4 of [the parties'] said Judgment [of dissolution of marriage]", and pursuant to section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West 2008)). On December 4, 2008, respondent filed a petition to "Review/Terminate Maintenance". On September 8, 2009, petitioner filed a petition for attorney fees and costs pursuant to sections 503(j) and 508 of the Act (750 ILCS 5/503(j), 508 (West 2008)). Hearings were held on the competing petitions on August 24 and 25, 2009, and May 17, 2010.

¶ 8 Petitioner testified as follows. She wanted to work after the judgment of dissolution in 2006 and applied for "hundreds" of jobs. Just after the judgment of dissolution, petitioner suffered memory loss. She needed money, so she worked as a handy person in Michigan where she was living because she had been caring for her ill father. She was not working as a nurse because she "was still having symptoms of posttrauma, so I was afraid if I worked as a nurse, I could kill someone." Petitioner then moved to Arizona in early 2006 and bought a car at some point but could not remember when because she still suffered from "memory loss."

¶ 9 Petitioner testified that she moved to Arizona because living near the family home "was too painful, because everywhere I go, there's a reminder of my son's death." When she arrived in Arizona in the Fall of 2006, she attempted to start a business called Creative Spirit Arts Center that would be similar to the Berkshire Counseling Center she operated prior to her marriage to respondent. The new business would provide individual counseling, group therapy, and classes. To prepare for her business, beginning in the Fall of 2006, petitioner took three business courses, wrote

a business plan, networked with other business owners in Tucson, and advertised. She invested $6,000 or $7,000 into the business. Her networking activities included meeting various business owners, talking to them about the goals and objectives of her business and asking them how to secure work from them. Petitioner also "sat on boards where I could meet people," "talked with different women's groups," met with the board of "Awakenings" which is "something like" a franchise, and discussed the possibility of opening an "Awakenings" in Tucson. Petitioner also became licensed as a registered nurse in Arizona a few months after she arrived in Arizona as a "backup," In case she "couldn't get [her] business off the ground." Around August 2008 the business "failed to launch" and she "panicked about money."

¶ 10 Petitioner also testified that sometime after the judgment of dissolution she worked for Sanctuary International, but could not remember when because "my memory wasn't so good." However, she testified that it was sometime after she "went for posttrauma therapy."

¶ 11 In 2008, petitioner began working at Caring Cooperatives. She explained her decision in the following manner: "[I]t was so emotional at the time at first. I mean, I just got over my son's death and moving, and then my dad died, and I'm trying to do this house thing, and—I think, we need to go to Caring Cooperatives." She worked as a care manager and earned $15 an hour at that job.

¶ 12 During the same time, she also worked as a substitute nurse in the Sunnyside School District. They offered her a full-time substitute nursing position. She left Caring Cooperatives to accept a full-time substitute nurse position at Desert View High School where she worked for two-and-a-half months. Petitioner interviewed for a permanent position as the full-time head nurse at the high school, but a younger nurse with 22 years of experience as a nurse practitioner was hired. Petitioner

took two courses to become certified as a school nurse, but had not completed the requirements at the time of the hearing.

¶ 13 Petitioner also testified that, in the summer of 2008, she accepted a school nurse job at Rio Rico High School seven miles from the Mexican border, over an hour from her home. She worked there for five months. Petitioner left this job because the Hispanic nursing aides were administering insulin to diabetics in violation of Arizona State law. Although petitioner told the aides to stop this practice, they did not comply. She also left because of racial discrimination and because the school was not medically safe. These reasons caused petitioner to feel uncomfortable and to have nightmares.

¶ 14 Petitioner testified that, in the summer of 2009, she worked as a nurse for Camp South Laurel in Casco, Maine, which paid $6,000 a month including travel expenses. Petitioner testified that it is the "highest paid camp in the country, as far as I know." She only worked there for one of two sessions because the campers had to be quarantined, according to the Center for Disease Control, when they contracted swine flu. Petitioner came home from the camp on July 30, 2009, and began to apply for jobs online and in "other ways."

¶ 15 At the hearing in May 2010 petitioner testified regarding her posttraumatic stress condition. She testified "I feel better and better. Now and again I have flashback. I have trouble ***. When they'd bring a patient to me who had drug abuse[,] as a school nurse, I would have flashbacks of my son, or if my patients now come and they are suicidal, it's a little scary, and I think back." Petitioner testified that she believed her condition had interfered with her ability to find a job, but that she "wish[ed] it didn't." In November 2009 petitioner took a seminar in suicide prevention and received nursing continuing education credits. In April 2010 petitioner took a training class required for a job

at La Frontera Hospital. Since her last court appearance in August 2008, petitioner applied to numerous potential employers in the healthcare field, including many doctors' and dentists' offices, but had not been successful in finding full-time employment. Petitioner named over 24 places where she had sought employment. Petitioner provided emails, letters, and notes from calls and interviews, indicating that she applied for jobs at 25 places of employment in 2009 and 2010, including at least eight nursing positions. These documents were admitted into evidence. Petitioner testified that she was rejected by many employers because of her age. At the time of the last hearing, she was 60 years old. Petitioner also testified that she placed her resume with a nursing registry that distributes resumes to employers on behalf of job-seekers. When asked during cross-examination whether she could name a doctor's office she had applied to for employment in 2008, petitioner testified that she could not because "[t]hat wasn't the course that I was pursuing." "Doctors' office nurses make $15 or so an hour. I couldn't live on that."

¶ 16 Petitioner's affidavit of monthly living expenses was admitted into evidence. Regarding her expenses, petitioner testified that her monthly expenses were approximately $4,900. She had approximately $10,600 in credit card debt. Petitioner testified that, if her maintenance was not increased, she might have to sell her house.

¶ 17 Petitioner testified regarding the lifestyle she and respondent enjoyed during their marriage. They attended the opera; enjoyed fine dining, new cars, a 4,800 square foot "half million dollar house," "domestic help," and traveling the world; and petitioner took art classes and respondent flew airplanes. Petitioner now lives in a small, 1,200 square foot house, does not attend the opera, have domestic help, a new car or nice clothes, enjoy fine dining or do any of the things she used to do.

¶ 18 Petitioner's tax returns for the years 2006 through 2008 were admitted into evidence. Petitioner testified that in 2006 and 2007 her tax returns showed no income other than money she received from respondent. Petitioner's 2008 tax return showed that she earned $28,301 in wages. Petitioner testified that she earned this income from her employment at Caring Cooperatives, Sunnyside School District, Desert View High School and Rio Rico High School. Petitioner testified that, to date in 2009, she had earned $5,000 in wages from her nursing job at Camp Laurel South in Maine. Petitioner testified that she had not rejected any offers of employment unless she was working at the time.

¶ 19 Judith Sher testified that she had been a vocational counselor since 1976, had provided specialized job placement and labor market analysis for clients for 27 years and had testified as a vocational expert in hundreds of divorce cases throughout northern Illinois. The court accepted her as a vocational expert.

¶ 20 Sher testified that she reviewed petitioner's educational background, resume and work history from 2006 to 2009. Sher also attended petitioner's deposition. Sher did not interview petitioner. Sher testified that petitioner "has the best job to go to if she wants to work. Nursing is the hottest field." The average nurse's annual salary in Arizona is $60,000. Sher opined that petitioner had not made a good faith effort to secure employment. Based on Sher's observations of petitioner during the deposition, Sher testified that petitioner responded intelligently, and had no physical impairments that would impair her future employability.

¶ 21 On August 12, 2010, the trial court entered an order finding:

> "Petitioner has made as much as of a good faith effort as is within her ability to become financially rehabilitated since her divorce from Respondent *considering her psychological and perhaps psychiatric limitations observed by the Court*.[1]
>
> The Court finds that Petitioner is in need of maintenance from Respondent to support herself and the Respondent is able to provide financial support to the Petitioner. The Respondent shall pay to the Petitioner the sum of $3,000 as maintenance in accordance with the terms of Judgment of Dissolution of Marriage, continuously through December, 2009, and from January, 2010, shall pay to the Petitioners the sum of $4,000 per month as maintenance." (Emphasis added.)

¶ 22 Regarding petitioner's petitioner for attorney fees and costs, the trial court found that respondent had:

> "[G]reater financial assets than Petitioner to fund litigation because of the success of his career and Petitioner's inability to resume a career after an absence of more than twenty-four years and her inability to become regularly employed due to obvious inadequacies in her thought process and ability to function in employment for which she has been trained or by which she can become financially independent."

The trial court also ordered respondent to contribute an additional $7,500 to petitioner's attorney fees.

¶ 23 Respondent timely filed this appeal.

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[1]The court noted in its order that petitioner "appears to be disorganized and her responses to questions by her attorney and the Respondent's attorney were confused and often not responsive to questions."

¶ 24 II. ANALYSIS

¶ 25 A. Rehabilitation

¶ 26 Respondent first argues that trial court's finding that petitioner made a good faith effort to rehabilitate herself was against the manifest weight of the evidence. Respondent, therefore, urges this court to reverse the trial court's decision extending maintenance to petitioner and requests that we remand this case and order the trial court to terminate maintenance.

¶ 27 We will not disturb a trial court's findings of fact unless those findings are against the manifest weight of the evidence. See *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Halpin v. Schultz*, 234 Ill. 2d 381, 391 (2009). Under the manifest weight standard, a reviewing court gives deference to the trial court as the finder of fact because it was in the best position to observe the conduct and demeanor of the witnesses. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). A trial court's ultimate decision to modify maintenance will not be disturbed absent an abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). A decision is an abuse of discretion if it is arbitrary, fanciful, or if no reasonable person would adopt the court's view. *Blum*, 235 Ill. 2d at 41.

¶ 28 We begin with the terms of the parties' MSA which are binding on the parties and the court. See 750 ILCS 5/502(b) (West 2010); *Blum*, 235 Ill. 2d at 32. A marital settlement agreement is construed in the manner of any other contract. *Id.* Thus, we must ascertain the parties' intent from the language of the MSA. See *id.* The language of an unambiguous marital settlement agreement must be given its plain and ordinary meaning. *Reda v. Estate of Reda*, 408 Ill. App. 3d 379, 384 (2011). The interpretation of the parties' MSA is reviewed *de novo*. *Blum,* 235 Ill. 2d at 33.

¶ 29 In this case, the MSA obligated petitioner to make "a good faith effort to economically rehabilitate herself." "Good faith" is defined as "that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation." *Black's Law Dictionary* 693 (6th ed. 1990). "Effort" is defined as, "[a]n attempt." *Black's Law Dictionary* 515 (6th ed. 1990).

¶ 30 The trial court's finding that petitioner made a good faith effort was based on the evidence; it was not unreasonable, arbitrary, and it cannot be said that the opposite conclusion is clearly evident. See *Halpin*, 234 Ill. 2d at 391. Further, the trial court's ultimate decision to continue and increase maintenance was not arbitrary or fanciful, and any reasonable person could adopt the court's view. See *Blum*, 235 Ill. 2d at 41. Although petitioner was well-educated prior to the marriage, at the time of the judgment, she was attempting to reenter the workforce at the age of 56 and had been essentially absent from her profession and the work force for twenty-two years. Further, it was uncontroverted[2] that her mental condition was unstable. Petitioner testified that due to the parties' son's suicide, she suffered from posttraumatic stress disorder. She testified that she obtained therapy for her problem and by May 2010 was feeling "better and better," but she still had trouble working as a nurse because she had flashbacks. Further, she testified that her condition had interfered with her ability to find a job. Despite petitioner's mental condition, for the first two years after the judgment, she attempted to begin a new business in Arizona, based on a successful business she ran before the parties' marriage. Her efforts included taking business classes, advertising, investing money in her new venture and networking. Sometime during this period, petitioner obtained her

[2]The expert, Ms. Sher, did not opine as to job opportunities for someone with mental impairments.

nursing license in Arizona. When the business did not succeed after two years, petitioner applied for numerous jobs and worked as a nurse at five establishments. However, these were not long-term jobs and petitioner believed her mental condition interfered with her ability to obtain employment. In addition, petitioner also believed that she suffered from memory loss.

¶ 31 The trial court found that petitioner "made as much of a good faith effort as is within her ability to become financially rehabilitated since her divorce from Respondent *considering her psychological and perhaps psychiatric limitations observed by the Court*." (Emphasis added.) The court stated that petitioner "appears to be disorganized and her responses to her attorney and respondent's attorney were confused and often not responsive to questions." The trial court also noted petitioner's posttraumatic stress disorder and her testimony that, due to this problem, she "could kill someone as a nurse." The trier of fact is in superior position than a court of review to observe the demeanor of a witness, judge her credibility, and determine the weight her testimony should be given. See *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1154 (2004). In this case, the trial court was in the best position to observe petitioner's apparent disorganized and confused demeanor, and to judge petitioner's credibility regarding whether her efforts to find sufficient employment were honestly made. In light of the record before us, we cannot say that the trial court's finding of good faith was against the manifest weight of the evidence.

¶ 32 Respondent argues that the trial court's findings regarding petitioner's "psychological and perhaps psychiatric limitations observed by the Court" are not supported by the record. Respondent also argues that petitioner's testimony regarding her psychological problems occurred before the judgment of dissolution. These arguments are forfeited because they are raised by respondent for the first time in his reply brief. See Supreme Court Rule 341(h)(7) (eff. July, 1 2008) (Points not

argued in appellant's brief "are [forfeited] and shall not be raised in the reply brief".) ; Supreme Court Rule 341(j) ( 341(j)) (eff. July 1, 2008) (Reply brief "shall be confined strictly to replying to arguments presented in" appellee's brief.).

¶ 33 However, respondent's arguments would fail even if they had not been forfeited because the trial court's findings are supported by the record and petitioner testified about her problems after the judgment. Respondent argues that the trial court's finding is not supported by the record because the court did not address what observations it made during the trial to support its conclusion that petitioner had psychiatric limitations. The trial court's order belies respondent's argument. The trial court noted the following evidence in its order.

> "The Petitioner testified that she suffered from post traumatic stress disorder (P.T.S.) [*sic*] as a result of the death of the parties' son. As part of her answer to a question by her attorney regarding her ability to be employed as a medical nurse, the Petitioner said that she suffers from P.T.S. and could kill someone as a nurse."

The court also noted in its order that petitioner "appears to be disorganized and her responses to questions by her attorney and the Respondent's attorney were confused and often not responsive to questions." The record supports the trial court's findings regarding petitioner's testimony, and it was in the best position to judge petitioner's demeanor. Thus, respondent's argument fails, regardless of forfeiture.

¶ 34 Respondent cites the following cases to support his position; *In re Marriage of Fazioli*, 202 Ill. App. 3d 245 (1990) and *In re Marriage of Cantrell*, 314 Ill. App. 3d 623 (2000). These cases are distinguishable from the case at bar.

¶ 35 In *Fazioli*, the wife sought an increase in maintenance because her expenses were greater due to her continued pursuit of a failing business (an art gallery) and failure to seek employment in her field (elementary education). *Fazioli*, 202 Ill. App. 3d at 250-51. The business that petitioner attempted to start was in her field; she already had successfully run a similar business. Further, when that business failed, she sought and obtained employment as a nurse. Thus, *Fazioli* is distinguishable.

¶ 36 In *Cantrell*, the wife received maintenance for six years, but applied for only eight to twelve jobs. *Cantrell*, 314 Ill. App. 3d at 626. In this case, petitioner attempted to start her own business in her field for two years, applied for at least 24 jobs, and worked at five places of employment. Further, in rendering its decision in *Cantrell,* the appellate court noted that the petitioner had "no apparent health impairments that might restrict her from working." *Cantrell*, 314 Ill. App. 3d at 630. In this case, petitioner was hindered by posttraumatic stress disorder. Thus, *Cantrell* is distinguishable.

¶ 37 In light of the record, the trial court's findings that petitioner was not economically rehabilitated, despite making a good faith effort, were not against the manifest weight of the evidence.

¶ 38 B. Permanent Maintenance

¶ 39 Next, respondent contends that the trial court "converted [petitioner's] reviewable/rehabilitative maintenance to permanent maintenance." Respondent also contends that the trial court abused its discretion by ordering him to pay maintenance for an unlimited time. Because these arguments are related, we will address them together. After reviewing the language of the trial court's order, we disagree with respondent's interpretation that it granted petitioner

permanent maintenance. However, the trial court's order is incomplete. The pertinent part of the trial court's order states:

> "The Respondent shall pay to the petitioner the sum of $3,000.00 as maintenance *in accordance with the terms of the Judgment of Dissolution of Marriage*, continuously through December, 2009, and from January, 2010, shall pay to the Petitioner the sum of $4,000 per month as *maintenance*." (Emphases in original.)

¶ 40 A trial court's order must be interpreted in a reasonable manner from the entire context in which it was entered, with reference to other parts of the record. *Williams ex rel. Beaton v. Ingalls Memorial Hospital*, 408 Ill. App. 3d 360, 372 (2011). The judgment of dissolution that incorporated the marital settlement agreement, provides for reviewable and modifiable maintenance and not for permanent maintenance. Considering the terms of the marital settlement agreement, the only reasonable interpretation of the trial court's order is an award of reviewable and modifiable maintenance.

¶ 41 The trial court's order is incomplete because the trial court failed to state whether its award of maintenance is reviewable or will terminate absolutely. Further, the court failed to provide a date for either event. Thus, this matter must be remanded for determinations of such matters. On remand, the trial court is to be guided by the marital settlement agreement, particularly subsections 3.2 and its reference to subsection 3.4. Subsections 3.2(v) provides, in relevant part, that the initial payment of maintenance terminates after "[t]he payment of 36 monthly payments of maintenance unless the Wife files a petition to review as described in subparagraph 3.4." Thus, on remand, the award of maintenance, must not exceed 36 months, whether it is reviewable or is to terminate absolutely.

¶ 42 Petitioner contends that, by not providing a date for the review of maintenance, the trial court awarded her permanent maintenance and "left the maintenance award subject to modification pursuant to section 510 of the Act, 750 ILCS 5/510 (West 2008) (substantial change in circumstances). As determined above, the marital settlement agreement awarded petitioner reviewable and modifiable and not permanent maintenance. Thus, we disagree with petitioner's contention that the trial court awarded permanent maintenance.

¶ 43 Petitioner contends that the marital settlement agreement provides for permanent maintenance because subsection 3.2 is titled "Permanent Maintenance." This argument is disingenuous at best because it ignores a well-settled principle of contract interpretation. To determine the intent of the parties, a court must consider the contract as a whole and not focus on an isolated portion of the contract. *Salce v. Saracco*, 409 Ill. App. 3d 977, 981 (2011). The first sentence following the title of subparagraph 3.2 provides "Husband shall pay Wife for *modifiable and reviewable maintenance.*" (Emphasis added.) The subsection also provides that "such maintenance shall terminate absolutely upon *** [t]he payment of 36 monthly payments of maintenance unless the Wife files a petition to review as described in subparagraph 3.4." In addition, subparagraph 3.4 is titled "Maintenance is Reviewable," and provides a mechanism for review. It begins "[t]he payment shall terminate unless Wife shall file a petition asking the Court to review maintenance." Thus, the contract as a whole indicates that the parties intended petitioner to receive modifiable and reviewable maintenance and that the title of subsection 3.2 is a misnomer.

¶ 44 Respondent also argues that the trial court erred by increasing maintenance from $3,000 to $4,000 each month. Respondent argues that, contrary to the MSA, the trial court considered factors other than the economic circumstances of the parties.

¶ 45 Section 3.4 of the parties' MSA provides:

> "If [Wife] has not been economically rehabilitated, despite making a good faith effort to do so, the Court may adjust maintenance, either by increase or decrease, or continue it at the same level, *depending on the economic circumstances of the parties*." (Emphasis added.)

¶ 46 Respondent argues that the trial court improperly considered facts that occurred during the parties' marriage in making its decision. Respondent cites the following statements of the trial court to support his argument. "During the parties' marriage the Respondent continued his employment and was the sole wage earner while the Petitioner was a home maker." The record reveals that these facts affected the economic circumstances of the parties. It was reasonable for the trial court to consider that the continuity of respondent's employment advanced his career and earning ability. At the time of the judgment, respondent's salary was $125,000 plus bonuses. In 2010, the time of trial, his salary was approximately $125,000 and he received a $16,000 bonus. Respondent also had approximately $616,000 in checking, savings and retirement accounts. Further, it was also reasonable for the trial court to consider the fact that petitioner's cessation of her career limited her career and earning capacity.

¶ 47 Respondent also argues that the trial court improperly considered factors set forth in section 504 of the Act (750 ILCS 5/504 (West 2008)) such as the parties' respective ages and respective educational backgrounds. Without determining whether the MSA allowed for a general review of maintenance pursuant to the factors set forth in sections 510(a-5) and 504 of the Act, it was not improper for the trial court to consider the parties' respective ages and educational backgrounds. The parties' respective ages and educational backgrounds were relevant to their economic circumstances. Therefore, the trial court properly considered such factors. The manifest weight of

the evidence supports the conclusion that the court only considered the economic circumstances of the parties in its judgment.

¶ 48 Next, respondent argues that the facts contained in the record do not support the trial court's increase in maintenance because petitioner overstated her expenses and was able to meet them with the $3,000 monthly maintenance payment she received from respondent. Respondent argues that she overstated her monthly federal income tax for her maintenance which she stated in her affidavit of estimated average monthly expenses for January to May 2009 (affidavit) as $340. Respondent notes that petitioner's 2007 income tax return reveals that her monthly federal income tax for maintenance was only $146.25. Respondent fails to recognize that the $340 estimate listed in petitioner's affidavit includes both Federal *and State* income tax. Because petitioner's estimate of her monthly Federal and State income tax for January to May 2009 is uncontradicted, the trial court properly relied on it.

¶ 49 Next, respondent notes that for "appliance repair/maintenance and lawn maintenance/snow removal for maintenance" petitioner stated in her affidavit that it "varies." However, petitioner lists these expenses as only $125 a month total, snow removal and lawn maintenance are obviously seasonal and petitioner provided an estimate. Thus, the trial court properly relied on this figure.

¶ 50 Respondent also argues that petitioner should not have included $400 in dental expenses because it was based on an expense she incurred in 2008. However, petitioner's affidavit reveals that she noted it was based on a 2008 expense and did not include this figure in her total monthly expenses. Thus, this argument lacks merit.

¶ 51 In addition, respondent argues that petitioner "took a double deduction for federal and state income tax by including an amount of $340.00 in her expenses and deducting an amount of $389.00

from her monthly income. (Plaintiff's Exhibit 11)." Plaintiff's exhibit 11 is petitioner's resume and does not contain her monthly income or a deduction for Federal and State income tax. Thus, respondent's argument fails to cite to the appropriate exhibit or portion of the record wherein this argument is supported. Without a proper reference to verify or corroborate this claim, the burden on review has not been sustained.

¶ 52 Respondent also notes that petitioner owns property with a net value of $220,064 and that she provided no documentation as to the value of her home or retirement account. Respondent fails to recognize that petitioner need not be reduced to poverty or sell assets before the court may award maintenance, especially where the record shows that respondent has sufficient income to pay such maintenance and still meet his own needs. See *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 620 (2004). Thus, the appellant has not convinced us that the trial court abused its discretion by increasing maintenance to $4,000.

¶ 53 C. Attorney Fees

¶ 54 Finally, respondent argues that the trial court abused its discretion by ordering him to contribute an additional $7,500 towards petitioner's attorney fees. Of this $7,500, respondent essentially argues that the trial court had no evidence to ascertain the amount of attorney fees above $20,195.17 or the reasonableness of those fees. Respondent argues that he had already paid $16,500 and that the "trial court's order essentially required [respondent] to pay the entire $20,195.17 plus an additional $3,804.83."

¶ 55 The record is incomplete regarding this issue. Petitioner filed an uncontroverted petition for attorney fees for $20,195.17 which was supported by an itemization of attorney fees and costs. In addition, on May 14, 2010, petitioner filed a supplemental petition for interim attorney fees and costs

seeking $5,000 for fees and costs already incurred and $5,000 for prospective fees and costs. This supplemental petition refers to "Exhibit 2 [as an] itemization of attorney's fees and costs"; however, this exhibit is not in the record on appeal. Thus, we do not know what evidence regarding this supplemental petition was before the trial court. Under the circumstances of this case, we must presume that the trial court has a sufficient factual basis to order an additional $7,500 in attorney fees and that such order conforms with the law. See *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009).

¶ 56 Further, at the close of the hearing on the petitions to modify maintenance, petitioner's attorney asked the court whether it was going to rule on attorney fees and the court asked respondent's attorney if he wanted to argue the issue. Respondent's attorney replied, "I don't want to argue. His fees are what they are." Petitioner's attorney told the court that petitioner had a balance of $7,500 to $7,700. Respondent did not object, request a hearing or demand an affidavit or itemization of such fees and costs. Accordingly, respondent forfeited his argument that the trial court abused its discretion by ordering him to pay an additional $7,500 in attorney fees. See *Cabrera v. First National Bank of Wheaton*, 324 Ill. App. 3d 85, 103 (2001) (failure to request hearing on motion results in waiver).

¶ 57 III. CONCLUSION

¶ 58 The judgment of the circuit court of Kane County is affirmed in part and remanded for a determination by the trial court as to whether the award of maintenance, which must not exceed 36 months from August 12, 2010, is reviewable or is to terminate absolutely.

¶ 59 Affirmed in part; cause remanded with directions.