No. 3–10–0247

Order filed April 19, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In Re MARRIAGE OF MAHASTI BAVARIAN,	)	Appeal from the Circuit Court
	)	For the 10th Judicial Circuit
	)	Peoria County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04-D-456
	)	
BIJAN BAVARIAN,	)	Honorable
	)	David J. Dubicki,
Defendant-Appellant.	)	Judge Presiding
	)	

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

Held: The trial court did not err in granting indefinite maintenance to Mahasti and ordering that Bijan pay a part of Mahasti's attorney fees.

In an appeal from the trial court's ruling following a review of rehabilitative maintenance, defendant Bijan Bavarian asserts the trial court erred in failing to terminate plaintiff Mahasti Bavarian's maintenance and in ordering him to pay a part of her attorney fees. For the reasons that follow, we affirm the trial court.

FACTS

The evidence of record establishes the following. At the time of their divorce, Bijan and Mahasti had been married for approximately 24 years. They had two children. Although Mahasti has a business degree earned in the country of Iran, during the marriage she basically remained at home as homemaker and caretaker of the children. Bijan, upon immigrating to the United States, became licensed and employed as an anesthesiologist. At the time of the divorce, Bijan was 52 years old and Mahasti was 45 years old.

Prior to the couple's dissolution of marriage judgment, they entered into a settlement agreement that was recorded through a hearing before a trial court on May 11, 2005. The trial court indicated at the hearing that the recitation of the settlement agreement on the record, once agreed to, was a final and enforceable accounting of the couple's agreement. As part of the settlement agreement, Bijan agreed to pay Mahasti rehabilitative maintenance in the amount of $4,000 per month based on his pay from employment with Associated Anesthesiologists S.C. (Associated). In addition to the $4,000, Bijan agreed to pay Mahasti 20% of any gross bonus income he received from Associated. At the time of the agreement, Bijan's base pay from Associated was $216,000 and his average bonus was $180,000 per year. According to the settlement agreement, the rehabilitative maintenance was to run from May 1, 2005 through August 2009, when it would be subject to review upon Bijan's motion. The settlement agreement also stated by way of Mahasti's attorney:

> "Mrs. Bavarian is currently attending ICC and she contemplates attending Bradley University starting full-time ***. She contemplates her education at Bradley ending in May of approximately 2009 and she hopes to have full-time employment by August of 2009. That is why the review period has been selected as

August of 2009."

Later, in the recitation of the settlement agreement, Bijan's attorney stated, "[w]e agreed this morning to rehabilitative maintenance. *** Mrs. Bavarian has agreed to provide proof of her school registration at the beginning of each semester to Dr. Bavarian." The rehabilitative maintenance obligation was made subject to modification "at any time based on a substantial change in circumstances," and each party was made responsible for their own attorney fees and costs. Bijan and Mahasti stated for the record that they agreed with the settlement agreement.

Pursuant to a petition filed by Mahasti in which she noted Bijan was seeking to void the settlement agreement "by refusing to enter into any written Judgment of Dissolution of Marriage setting forth said settlement agreement," a judgment of dissolution of marriage was entered on June 21, 2005. With regard to maintenance, the dissolution order stated Bijan was to pay Mahasti rehabilitative maintenance in the amount of $4,000 per month plus 20% of his gross bonus income from Associated, commencing on June 1, 2005, and running through August 2009, when the maintenance obligation would be subject to review. The maintenance obligation was subject to modification based on a substantial change of circumstances.

On September 30, 2005, Bijan filed a petition to modify maintenance to $3000 per month and delete the 20% bonus provision of the dissolution agreement. As grounds for his petition, Bijan alleged Mahasti was not in compliance with the dissolution judgment "with regard to the [Masters in Business Administration] Program" (MBA). Bijan asserted Mahasti had not sought admission to Bradley, had not taken any credit hours though Bradley and had taken a full-time job. In response to Bijan's petition, Mahasti asserted she was not required to enroll at Bradley "at this time." Mahasti also responded that in compliance with the settlement agreement, she had provided proof of her

school registration with respect to fall semester at Illinois Central College "this year." Bijan's petition was denied.

On October 29, 2008, Mahasti filed a petition to modify rehabilitative maintenance "to conform with defendant Bijan Bavarian's[ ] new mode of compensation." In her petition, Mahasti alleged that at the time of the dissolution of marriage, Bijan was receiving base pay of $216,000 per year and bonuses of approximately $180,000 per year from Associated and that he had been paying her $4,000 per month and 20% of his bonus. Mahasti asserted that on October 13, 2008, Bijan started working for a Florida medical center and hospital, receiving a base pay of $325,000, and a one-time $10,000 bonus. Mahasti asserted the calculation of Bijan's payment of rehabilitative maintenance should therefore be modified. Mahasti requested the court change the method of calculation of the maintenance payment as follows:

$325,000 base pay (from Florida hospital)

-$216,000 base pay (Associated)

$109,000

x20%

$21,800 ÷12 = $1,816 + $4,000 = $5,816 per month in maintenance.

Mahasti also asserted Bijan should be required to pay to her 20% bonus income of any amount over $325,000.

On December 5, 2008, Bijan filed a petition to terminate or reduce Mahasti's maintenance. As part of his petition, Bijan asserted the payment of rehabilitative maintenance to Mahasti was "for the express purpose of allowing [her] to complete an MBA program at Bradley University, to acquire additional education and job skills to become employable for a higher paying job." Bijan argued he

had recently learned Mahasti had never enrolled in an MBA program and that sufficient time had elapsed to have permitted Mahasti to have completed an MBA degree and become financially self-sufficient. Bijan also asserted, as a change in circumstance, his employment with another employer from whom he was not entitled to receive bonus income. In response to Bijan's petition to reduce or terminate maintenance, Mahasti argued she was under no obligation under the provisions of the dissolution judgment to seek an MBA. Mahasti asserted that since the entry of the dissolution judgment she had obtained two associate degrees, one in supervision management and one in hospitality management. Mahasti also stated Bijan's new employment earned him base pay of $325,000 a month, a $109,000 increase over his previous base pay.

On January 7, 2009, Mahasti filed a petition to modify and increase maintenance. Mahasti asserted in her petition that a substantial change in circumstances had occurred in that Bijan was currently paying Mahasti only $4,000 per month and was not paying her 20% of his income over $216,000 because he was currently receiving $325,000 as base income without bonus income. Mahasti argued that she had obtained associate degrees from Illinois Central College and that she was employed full-time as a shift manager, earning $18,000 per year, an appropriate employment given her age, education and experience. Mahasti requested her maintenance be changed to permanent maintenance and increased to $12,500 per month.

Hearings were held before the trial court on Bijan's December 5, 2008, petition to reduce or terminate maintenance, and Mahasti's two petitions to modify and increase maintenance. Extensive testimony was given. During the hearings, Mahasti maintained that she was not under any obligation to attend Bradley University as a condition of receiving rehabilitative maintenance, although she had contemplated it. Bijan, on the other hand, asserted that he and Mahasti had negotiated the MBA plan

as a condition of the settlement agreement and that he had never been informed that Mahasti had abandoned the MBA plan.

After hearing the evidence, the trial court issued findings and an order. In commenting on the discrepancy in the parties' assets, the trial court noted Mahasti's spending history was "significant," a factor that could have contributed to her lack of assets. Nevertheless, the trial court found Bijan had more than adequate means to take care of his needs. The trial court also noted Mahasti's present and future earning capacity was limited. The trial court opined Mahasti had the ability to attempt to get a four-year degree at Bradley or Illinois State University, however, the trial court questioned how much a degree would enhance Mahasti's earning capacity. In referring to the discussion "about whether she has the potential to get an MBA," the trial court also noted Mahasti was now in her mid-50s. The trial court also stated that although Mahasti had a degree from schooling in Iran, during the marriage she had stayed home with the children and deferred her opportunities for further enhancement. The trial court considered Mahasti could still improve her financial condition. The trial court stated that the couples' standard of living had not been extravagant.

Referring to Bijan's argument that the settlement agreement required Mahasti to seek an MBA, the trial court considered there was nothing in the judgment of dissolution that committed Mahasti to attempt to obtain an MBA at Bradley. The trial court noted the evidence indicated Mahasti may have intended or aspired to at least obtain an undergraduate degree. The trial court noted it was not necessarily unreasonable for Mahasti not to pursue an MBA considering the factors and difficulty in proving she had an undergraduate degree in Iran. The trial court also stated that the rehabilitative maintenance was intended, at least in part, to fund Mahasti's schooling toward the goal

of her obtaining at a minimum a four-year degree, "perhaps at Bradley *** as suggested *** in the May '05 settlement [which was made part of] the record." The trial court also stated Mahasti had an obligation to try to become self-sufficient and self-supporting. The trial court stated Mahasti did not make a reasonable effort to attempt to get a four-year degree and that she could have enhanced her employability by attempting to get a four-year degree. The trial court stated Mahasti's failure to make efforts to obtain a four-year degree had to be construed against her. The trial court considered Mahasti was not in a substantially different position than she was in May of 2005. The trial court also considered, "her failure to attempt to get an MBA degree [does not] mean[ ]that she just gets no maintenance at all." The trial court opined Mahasti had made some effort to become self-sufficient.

In sum, the trial court found that Mahasti could have made a more diligent effort to become self-sufficient but that her current circumstances indicated she could not command an income that would allow her a standard of living approximating that of the marriage. The trial court found no reason to increase Mahasti's maintenance, however, and denied her petition so requesting. The trial court also considered that when the original rehabilitative maintenance was put in place the contemplation was that Mahasti would not be working full-time because she would be pursuing her education. For this reason, the trial court reduced Mahasti's maintenance and, for the other reasons stated, the trial court found the maintenance should be considered indefinite. The trial court also considered that either party could still seek a modification of the maintenance in the future. The trial court agreed with Mahasti's calculations that Bijan owed her $1,816 a month for the 10 months after he began his new employment during which he made maintenance payments of only $4,000 a month. The trial court then awarded Mahasti $4,700 a month in permanent indefinite maintenance

retroactive to September 1, 2009, which resulted in an arrearage owed Mahasti of $4,200. The trial court also ordered Bijan to pay $20,000 of Mahasti's attorney fees. Bijan follows with this appeal of the trial court's rulings.

ANALYSIS

The first issue before us on appeal is whether the trial court erred in granting Mahasti indefinite maintenance in the face of Bijan's assertions that maintenance should be terminated because Mahasti failed to fulfill the terms of the settlement agreement in that she did not use her rehabilitative maintenance to obtain an MBA from Bradley University.

Interpreting a marital settlement agreement is a matter of contract construction and as such, courts seek to give effect to the parties' intentions. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425-26 (2005). In general, the best indication of the parties' intent is the language used in the agreement. *Dundas*, 355 Ill. App. 3d at 426. When the terms of a settlement agreement are unambiguous, they must be given their plain and ordinary meaning. *Dundas*, 355 Ill. App. 3d at 426. If, however, the language is ambiguous, parole evidence may be used to decide what the parties intended. *Dundas*, 355 Ill. App. 3d at 426. We review *de novo* the interpretation of a marital settlement agreement. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009).

In the instant case, Mahasti does not dispute that she entered into a settlement agreement with Bijan. Mahasti cannot deny the binding nature of the settlement agreement, which does include the Bradley University reference. See *Blum*, 235 Ill. 2d at 32 (citing to 750 ILCS 5/502(b) (West 2004) and stating the terms of the marital settlement agreement are binding on the parties and the court). In the instant case, the trial court which recorded the settlement agreement noted its enforceability and Bijan and Mahasti stated for the record that they agreed with the terms of the settlement

agreement.

Having concluded that the settlement agreement is in fact a binding part of the dissolution judgment, we next turn to the question of whether the agreement requires as a condition precedent to the receipt of maintenance that Mahasti attend Bradley University. Mahasti maintains that it does not. We agree. Although Mahasti stated for the record that she was "contemplat[ing]" enrollment at Bradley University with the goal of obtaining full-time employment by August of 2009, as Bijan admits, Mahasti did not indicate in what capacity she contemplated gaining admission to the university. No where in the settlement agreement is there a reference to an MBA degree, a fact that supports the trial court's finding that a four-year degree may have just as reasonably been Mahasti's "aspiration." Furthermore, and more important, no where in the settlement agreement is it stated that a consequence of failing to follow through on her "contemplation" regarding Bradley would result in the loss of Mahasti's rehabilitative maintenance. The only overt step that Mahasti appears to have been required to make was to provide proof of her school registration at the beginning of each semester to Bijan. In the section of the settlement agreement with the above reference, no particular school is named.

Recognizing, as have courts before us, that settlement agreements are oftentimes "not a model of unambiguous drafting" ((Internal quotes omitted) *Blum*, 235 Ill. 2d at 35), we consider the parole evidence to which Bijan directs us with a view to whether it clarifies the ambiguity in the "attending Bradley" reference in the settlement agreement. As extrinsic evidence, Bijan points to evidence that Mahasti presented Bijan with documents about the Bradley MBA program and that she requested her transcripts from Iran so she could sign up for requirement credits for her "MBA" program. Bijan also points to Mahasti's admission that the MBA plan was her "decision,"

documents from the local community college in which Mahasti stated her intent was to transfer to Bradley, and the fact that Mahasti already had a bachelor's degree in business from Iran.

Even casting aside the fact that Mahasti denies the validity of some of the evidence and the fact that the documents from the local community college actually support the idea that Mahasti's goal may have been a four-year undergraduate degree, the evidence Bijan presents does not support a finding that Mahasti's stated contemplation was anything more than an aspiration or that Bijan intended that her maintenance would be terminated if she did not attend Bradley with the intention of obtaining an MBA. We cannot conclude the evidence to which Bijan directs us, in his words, "overwhelmingly" indicates the parties' intention that a condition of rehabilitative maintenance was that Mahasti enroll in Bradley's MBA program. Moreover, in view of the fact that at the time of the settlement agreement Mahasti had not made any effort to have her foreign degree recognized, it would have been difficult to foresee with any certainty that Mahasti's completion of an MBA at Bradley was a reasonable goal. When the terms of a settlement agreement are susceptible to two different interpretations, the court must apply the interpretation that establishes the rational and probable agreement. *Dundas*, 355 Ill. App. 3d at 426. For these reasons, we find that although the parties entered into the settlement agreement with the intention that Mahasti be rehabilitated in an effort to become more self sufficient, the agreement was not intended to demand that Mahasti attend Bradley University with the intention of obtaining an MBA or forfeit her right to maintenance.

Bijan's further assertion is that Mahasti did not make a good faith effort to rehabilitate herself. In this regard, Bijan argues the trial court erred in awarding her indefinite maintenance and retroactive rehabilitative maintenance. The award and modification of maintenance rests within the sound discretion of the trial court and we will not disturb its judgment absent an abuse of that

discretion. *In re Marriage of Carpel,* 232 Ill. App. 3d 806, 828 (1992). A clear abuse of discretion occurs when "the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Blum*, 235 Ill. 2d at 36, quoting *People v. Hall*, 195 Ill.2d 1, 20 (2000). An award of rehabilitative maintenance is intended to provide the recipient spouse with an opportunity to adjust to nonmarital life and provide herself with independent means of support. See *Carpel,* 232 Ill. App.3d at 828. Rehabilitative maintenance requires a continuing effort by the petitioner to become self-sufficient. *In re Marriage of Courtright*, 229 Ill. App.3d 1089, 1091 (1992). A failure to make a good faith effort to become self-sufficient may result in a court terminating rehabilitative maintenance. *Courtright*, 229 Ill. App.3d at1091.

The duty to seek financial independence does not, however, require the party receiving maintenance to liquidate her assets in order to achieve that independence. *Carpel*, 232 Ill. App. 3d at 828. The goal of financial independence "must be balanced against a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage." *Carpel*, 232 Ill. App. 3d at 828, quoting *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378 (1991). The *Carpel* court went so far as to state that when the facts make it clear that one spouse is unable to support herself in the manner in which the the couple lived during the marriage, then it is an abuse of discretion to award only rehabilitative maintenance. *Carpel*, 232 Ill. App. 3d at 828. As stated in *Carpel*:

> "[The former homemaker] should not be penalized for having performed *** her assignment under the agreed-upon division of labor within the family. It is inequitable upon dissolution to saddle *** [her] with the burden of *** her reduced earning potential and to

> allow [the former wage-earning spouse] to continue in the advantageous position *** he reached through their joint efforts." (Internal quotes omitted). *Carpel* at 110, quoting *In re Marriage of Kerber*, 215 Ill. App. 3d 243, 253-54 (1991).

In the instant case, the trial court went to great lengths to discuss Mahasti's less than diligent effort to enhance her earning potential. The trial court found that the rehabilitative maintenance award was intended to give Mahasti an opportunity to became self-supporting The trial court considered that at some point, Mahasti at least aspired to obtain a four-year degree, but that she had failed to do so, and the trial court "construed [her failure] against her." Nevertheless, as also noted by the trial court, Mahasti made some effort to rehabilitate herself and her failure to attempt to obtain higher education does not mean that her maintenance should be completely terminated. As noted above, the parties did not make termination of maintenance upon failure to obtain an advanced degree a part of their settlement agreement. The trial court noted that Bijan had more than adequate means to take care of his needs but that Mahasti currently could not command an income that allowed her to meet the standard of living she had enjoyed during the marriage. The trial court also noted that during the marriage, Mahasti, who at the time of the hearing was 50 years of age, had deferred any opportunity to advance her earning potential because she had stayed home with the couple's children. See *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1082 (1997) (where a spouse is not employable or is employable only at a low income compared to the previous standard of living, indefinite maintenance would be appropriate). Furthermore, the trial court did not discount the possibility that Mahasti might still improve her financial condition and stated either party could seek to modify the maintenance award in the future.

We also consider that, although it was not mandatory that it do so, the trial court in this case made explicit findings based on the statutory factors enumerated in section 504(a) and section 510(a-5) of the Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), 510(a-5) (West 2006)) with respect to the modification or termination of the maintenance under review. Under sections 502 and 504(a) of the Act, unless the parties have agreed to specific terms for modification or termination of maintenance in a written agreement pursuant to section 502, the court must consider the statutory factors set forth in subsections (1) through (12) of section 504(a) in postdecree modifications of maintenance. *Blum*, 235 Ill. 2d at 31. In the absence of a written agreement to the contrary, section 510(a-5) provides additional factors for the trial court to consider in determining whether modification or termination of maintenance is warranted. *Blum*, 235 Ill. 2d at 31. It is not necessary, however, that when the basis for an award of maintenance is established in the record, the trial court make explicit findings for each of the statutory factors. *Blum*, 235 Ill. 2d at 38. In the instant case, the trial court provided a record for its ruling and made explicit findings with respect to the enumerated factors of the Act. Ultimately, the trial court found that maintenance for Mahasti should continue, but awarded her a lesser amount than she had been receiving based, in part, on the changed circumstance of her full-time employment and the fact that she was no longer enrolled in school. We find no clear abuse of discretion in the trial court's ruling.

Bijan's final issue on appeal is that the trial court erred in ordering him to pay a part of Mahasti's attorney fees. The allowance of attorney fees and the amount awarded are matters within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *In re Marriage of DeLarco*, 313 Ill. App.3d 107, 111 (2000). Pursuant to section 508 of the Act, the trial court may, in its discretion and after consideration of the financial resources of the

parties, order one spouse to pay all or part of the other's attorney fees arising out of the dissolution proceedings. *DeLarco*, 313 Ill. App.3d at 111; 750 ILCS 5/508 (West 2006). In making an award pursuant to a party's petition for contribution to fees and costs, the trial court must base the award on the criteria for the division of marital property set forth in section 503 of the Act (750 ILCS 5/503(d) (West 2006)) and, if maintenance has been awarded, the criteria for an award of maintenance set forth in section 504 of the Act (750 ILCS 5/504(a) (West 2006)). *DeLarco*, 313 Ill. App.3d at 111. In the instant case, having examined the record of the hearing on the issue of the attorney fees, we find the trial court properly considered the appropriate factors and we find no reason to overturn the trial court's ruling as an abuse of discretion.

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

Affirmed.