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2014 IL App (3d) 130068-U

Order filed February 7, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF	) Appeal from the Circuit Court
CAROLYN J. GUNN,	) of the 10th Judicial Circuit,
	) Peoria County, Illinois,
Petitioner-Appellee and	)
Cross-Appellant,	)
	) Appeal Nos. 3-13-0068 and 3-13-0337
and	) Circuit No. 11-D-446
	)
RANDALL S. GUNN,	)
	) Honorable
Respondent-Appellant and	) Michael Risinger,
Cross-Appellee.	) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Lytton and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion by awarding petitioner permanent maintenance of \$500 per month.
- ¶ 2 Petitioner, Carolyn J. Gunn, filed a petition for dissolution of marriage from respondent, Randall (Randy) S. Gunn. The trial court awarded Carolyn permanent maintenance of \$600 per month. Randy filed a motion to reconsider the maintenance award. The trial court reviewed its

decision and reduced the maintenance award to \$500 per month. Randy appeals, arguing that the \$500 award was error. Carolyn cross-appeals, arguing that reducing the award from \$600 to \$500 was error. We affirm.

¶ 3

#### FACTS

¶ 4 After more than 25 years of marriage, Carolyn filed a petition for dissolution of marriage from Randy. During the marriage, the couple had two children, J.G. and C.G. At the time of the divorce, J.G. was a freshman in college, and C.G. was a sophomore in high school. At a contested hearing, the court awarded the parties joint custody of C.G., with Carolyn receiving physical custody.

¶ 5 At the time of the divorce, Carolyn was 49 and Randy was 52 years old. Carolyn worked throughout the marriage and had earned a master's degree. When she filed for divorce, she had been employed for 14 years as a licensed clinical professional counselor for a Catholic church. Randy was self-employed as a salon owner and hairdresser. The court found that Randy's annual net income was \$57,750 and Carolyn's was \$42,000.

¶ 6 The court ordered that Randy pay \$1,000 per month in child support, except for the months of June and July, in which no child support payments would be due, and August, in which only a \$500 child support payment would be due. Total annual child support payments equaled \$9,500. Child support payments were to continue for three years, until C.G. graduated from high school. In dividing the marital property, the court gave Carolyn an advantage of approximately \$26,000, which the court explained could be considered an award of maintenance in gross. The court awarded Carolyn permanent maintenance of \$600 per month. The court explained that the maintenance award essentially equalized the parties' incomes.

¶ 7 Randy filed a motion to reconsider the maintenance award. He argued that the maintenance award was excessive based upon the needs of the parties and the standard of living established during the marriage. The court held a hearing on the motion. During the hearing, the court touched on the 12 factors from section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/504(a) (West 2012). The court found that the present and future earning potential weighed in favor of awarding maintenance. The court explained that it had not considered the needs of the parties in its initial award, but was considering them now. The court found that because of the length of the marriage and Carolyn's established career, rehabilitative maintenance was inappropriate. The court noted that the parties enjoyed a "pretty comfortable" standard of living during the marriage.

¶ 8 The court reduced the maintenance award to \$500 per month. The court explained that the standard of living established during the marriage was the most important factor it considered. In addition, the court gave particular weight to the needs and the earning potential of the parties.

¶ 9 Randy filed another motion to reconsider, challenging the \$500 maintenance award. The court denied the motion. Randy appeals. Carolyn cross-appeals, arguing that the court erred by reducing the maintenance award.

¶ 10 ANALYSIS

¶ 11 Randy claims the trial court erred because: (1) the maintenance award was excessive; and (2) the maintenance award was permanent rather than temporary. Carolyn replies that the length of the maintenance award was within the court's discretion, and she cross-appeals claiming that the court erred by reducing the award from \$600 to \$500 per month.

¶ 12 Section 504 of the Act sets out 12 potentially relevant factors that a court should consider when awarding maintenance. 750 ILCS 5/504(a) (West 2012). Although a trial court must consider all relevant statutory factors, it need not make specific findings as to the reasons for its decisions. *In re Marriage of Kocher*, 282 Ill. App. 3d 655 (1996). Permanent maintenance is appropriate "where it is evident the recipient spouse is either unemployable or employable only at an income considerably lower than the standard of living established during the marriage." *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 833 (1994).

¶ 13 This court summarized the maintenance inquiry in *In re Marriage of Selinger*:

" 'The benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, the duration of the marriage, the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the non[-]marital property.' " *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004) (quoting *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972 (1992)).

¶ 14 A trial court's maintenance award will not be disturbed absent an abuse of discretion. *In re Marriage of Sturm*, 2012 IL App (4th) 110559. An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.* The trial court's factual findings made in determination of the maintenance award will not be reversed unless they are against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288 (2010).

¶ 15 Randy argues the award was excessive because the trial court failed to consider the parties' incomes, needs, and future earning capacities. 750 ILCS 5/504(a)(1) through (3) (West

2012). In addition, Randy argues that Carolyn's standard of living has not been adversely affected. See 750 ILCS 5/504(a)(6) (West 2012). Randy explains that he is unable to meet his monthly expenses, while Carolyn was able to take a vacation shortly after the couple separated. In addition, Carolyn has moved into a two-bedroom apartment, which affords her a similar standard of living to that established during the marriage.

¶ 16 Carolyn responds that her lifestyle has been affected because she now resides in a two-bedroom apartment in a large apartment building rather than in a four-bedroom house. In addition, Carolyn argues that Randy's financial affidavit exaggerates his financial needs.

¶ 17 At the hearing on the motion to reconsider, the trial court explained the weight it placed on the section 504 factors. 750 ILCS 5/504(a) (West 2012). As to the needs of the parties, the court found that Randy regularly overspent his income, meaning that his actual needs did not justify his monthly expenses. In addition, the allocation of property would eliminate some of Randy's debts, thereby reducing his monthly needs. The court calculated the parties' present incomes, and we defer to that finding. See *Dunseth*, 260 Ill. App. 3d at 833 ("[I]t is difficult to accurately determine the net income of a self-employed individual. Such a determination is one for the trial court"). The court found that Randy's future earning potential was significantly greater than Carolyn's. On balance, the court weighed these factors to determine an award of \$500 per month was appropriate. We cannot say that the court's decision was an abuse of discretion.

¶ 18 The court also determined that the award should be permanent rather than rehabilitative. That conclusion was reached after considering several factors. As explained in *Selinger*:

"Even where, as in this case, a former spouse has a good job with a decent

income, the reasonable needs of that spouse are still to be measured by the standard of living the party seeking maintenance enjoyed during the marriage, and a permanent maintenance award is justified where the spouse has employment skills but there is a discrepancy between her probable future income and the amount of income that would provide the standard of living she enjoyed while married." *Selinger*, 351 Ill. App. 3d at 618-19.

In the present case, the trial court found that Randy's future earning potential was significantly greater than Carolyn's and that Carolyn could not maintain the standard of living established during the marriage. Therefore, it was not an abuse of discretion for the court to award permanent maintenance.

¶ 19

#### CONCLUSION

¶ 20 The decision of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.