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2014 IL App (3d) 130459-U

Order filed March 19, 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
SUSAN E. MOORE	)	of the 10th Judicial Circuit,
	)	Tazewell County, Illinois,
Petitioner-Appellee,	)	
	)	
and	)	Appeal No. 3-13-0459
	)	Circuit No. 12-D-327
JOSEPH MOORE,	)	
	)	Honorable Jerelyn Maher,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices O'Brien and Schmidt 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 \$2,900 per month after properly considering all relevant factors pursuant to the Illinois Marriage and Dissolution of Marriage Act.
- ¶ 2 Petitioner, Susan Moore, filed a petition for dissolution of marriage from respondent, Joseph Moore. On March 22, 2013, the trial court entered a judgment of dissolution of marriage, incorporating an order issued by the court on February 20, 2013, awarding Susan \$2,900 per

month in permanent maintenance. On appeal, Joseph argues the trial court abused its discretion by awarding permanent maintenance in the amount of \$2,900 monthly to Susan. We affirm.

¶ 3

### FACTS

¶ 4

Susan and Joseph were married on November 24, 1990. During the marriage, the couple had two children, Samuel, born May 8, 1995, and Jack, born January 19, 1997. On July 10, 2012, after nearly 22 years of marriage, Susan filed her petition for dissolution of marriage. At the time, she was 49 years old and Joseph was 48. On October 29, 2012, the court granted the parties joint legal and physical custody of both children.

¶ 5

On February 13, 2013, the trial court held a hearing on the disputed matters, specifically the value of the marital residence, maintenance, child support, attorney fees, and the parties' respective dissipation claims. At the beginning of the hearing, the parties agreed to an equal distribution of the marital property, including various accounts, vehicles, household assets, and the equity in the marital residence.

¶ 6

The parties lived in a home located in Tremont, Illinois since early 1992. Two separate appraisals valued the home at \$180,000 and \$242,500. With the exception of the mortgage balance of \$32,941.82, the parties did not have any other marital debt at the time of the hearing. Joseph indicated he wished to refinance the home in order to buy-out Susan's share of the value of the home.

¶ 7

Prior to the marriage, Susan graduated high school, and worked for Omaha Airport Authority, but left that position to move to Illinois to be with Joseph. Upon arriving in Illinois, Susan worked full-time for three years in the accounting department at Peoria Travel Bureau, and then worked two years as a receptionist for the Peoria Park District. Susan left her position

at the Peoria Park District to be a stay-at-home mother shortly before Samuel's birth in May 1995.

¶ 8 After the birth of the children, Susan stayed at home until November 2008, when she opened "Little Betty's Design," a retail and interior design business. Susan closed the business in April 2011 due to lack of profit. On November 15, 2012, Susan obtained employment working the "ramp" for Air-Wisconsin Airlines, where she performed tasks including loading luggage and de-icing the aircraft.<sup>1</sup> Susan earned \$9 an hour, working 24 hours per week, without any health or retirement benefits. Susan explained that her current employer had just reduced most of the employees from full-time to part-time employment, and would not be offering her full-time employment. Susan hopes to attend a six-week training course to become a flight attendant after Jack's graduation from high school in May of 2015.

¶ 9 In the summer of 2012, Susan was diagnosed with cervical cancer. Susan could not obtain health insurance through her employment at the airport, but she could maintain COBRA insurance through Joseph's plan for \$460 per month. Susan's anticipated monthly expenses after the divorce would be \$5,366.25.

¶ 10 Joseph earned a Bachelor's degree in sales and marketing in December 1988 and began working as a grain trailer salesman at Wilson Trailer Company in February 1989. At the time of the hearing, Joseph worked for the same company and received a base salary of \$14,000 per year, plus commission for trailers sold and a bonus based on trade-ins. Including both commissions and bonuses, Joseph earned \$174,158 from his employment with Wilson Trailer Company in 2012, \$215,452 in 2011, and \$201,139 in 2010. Joseph's retirement account had a value of \$824,205.01. The decrease in Joseph's income from 2011 to 2012 was caused by the

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<sup>1</sup> On October 10, 2012, the court ordered Susan to obtain full-time employment or to enroll in school and maintain part-time employment.

drought, which decreased business more than 30 percent. Joseph's anticipated monthly expenses after the divorce would be \$7,356.52.

¶ 11 After taking the matter under advisement, the trial court entered a detailed written order on February 20, 2013. The trial court ordered Joseph to pay \$2,750<sup>2</sup> monthly for child support and denied each party's request for a dissipation award. The court also denied Susan's request for contribution toward her attorney fees. The court found the value of the marital residence to be \$242,500.

¶ 12 In addition, the court ordered Joseph to pay Susan permanent maintenance, in the amount of \$2,900 per month, after the court addressed each of the factors set forth in section 504 of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/504(a) (West 2012). The court's order provided:

- “(1) *The income and property of each party including nonmarital*  
The marital estate is approximately \$1.2 million. The parties have accumulated significant pension and retirement, savings, and a marital residence with equity of approximately \$200,000. They have decided to divide this equally[.] In addition, the wife has \$75,000 of nonmarital inheritance. Husband contends that the wife will leave the marriage with over \$700,000 and she can support herself. However, this is but one factor to consider.
- (2) *The needs of each party*  
Nothing has been shown that either party has special needs. As will be discussed below the wife may have some health issues, but nothing has been demonstrated that they have manifested into special needs. Wife will require relocation as she continues to live in the marital residence awarded to the husband. Yet, she does have liquidity to secure comfortable accommodations. Her major need is going to be health insurance and full time employment.
- (3) *The present and future earning capacity of each*  
Husband has a bachelor's degree and has been employed with the same company since 1989. He has steadily worked and but for the drought

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<sup>2</sup> According to the March 22, 2013, judgment for dissolution of marriage, child support would be reduced to \$1,964.28 per month, effective May 19, 2013, when the parties' oldest child, Samuel, graduates high school.

earned an income that allowed the parties to acquire significant assets while raising two children. Wife has a high school education with some training in the airline industry. She has, likewise, contributed to the parties['] standard of living with her domestic duties of being a stay-at-home Mom. A couple of years ago she attempted her own consulting/retail business for interior decorating but it has closed never resulting in a profit. Pursuant to a temporary order she acquired employment at Air Wisconsin earning \$9.00 an hour doing basically physical work on the ramp. Given her age and educational/vocational training it is unlikely she could attain a position with the income potential of the husband.

(4) *Impairment of present and future earning capacity of party seeking maintenance due to devoting time to domestic duties*

It is not disputed it was a mutual decision for wife to be a stay-at-home mom. Husband had his degree before marriage, but wife from the birth of their first son devoted full time to being a homemaker. She has not returned to school since Sam's birth.

(5) *The time necessary for the party seeking maintenance to acquire appropriate education, training or employment taking into consideration duties as custodian of children*

The children are teenagers in high school; in fact, Sam graduates this spring. The needs of the children do not require the wife to stay at home now. She has not identified any plan for her future employment or career except to train for approximately 6 weeks to become a flight attendant with the potential of an income of \$15,000 annually. The economic reality of divorce is that even splitting the pie in half equally does not provide as much as access to the whole pie. For the wife to obtain a college degree, she would deplete her assets for a degree to compete with much younger people with a bachelor's degree. She can not be expected to start school in the fall, graduate in 4 years, and obtain a job commensurate with the degree chosen. Likewise, given her current vocational history, she can not be expected to obtain employment with comparable earnings as the husband. However, she is expected to develop and pursue a plan to obtain training or a job that will help contribute to her economic needs.

(6) *Standard of living*

The parties have enjoyed a very comfortable standard of living.

(7) *The duration of the marriage*

The parties have been married nearly 23 years.

(8) *Age and physical/emotional health*

The wife recently turned 49 and the husband will turn 50 in June. The wife described some medical treatment for managing cervical cancer. As

of the date of the trial she was not nor had not undergone chemotherapy or radiation for the problem. No medical testimony was introduced. The husband did not articulate any medical problems. Both parties appear to be emotionally well.

(9) *Tax consequences*

No evidence was introduced as to any unusual tax consequences resulting from the property distribution or from the usual tax treatment of maintenance.

(10) *Contribution to education*

Husband had bachelor's degree before marriage.

(11) *No valid agreement factor*

(12) *Any other factor found equitable*

In essence, this is a long term marriage with the parties 49 and nearly 50 years of age. They have lived a comfortable life and planned well for later years. The oldest child graduates high school this May and the youngest will be a junior next year. The husband has a solid job earning on average for the last few years approximately \$200,000 annually. Indeed, he has experienced the economic turndown caused by the drought, but he did earn \$174,458 for last year. Wife has been a stay-at-home mom. Her only job experience other than her current one was a failed attempt at a business. The major obstacle for the wife is the cost of COBRA being \$460 monthly, and competing for an economically meaningful job at her age with her education and training. She does leave the marriage with significant assets as well as her \$75,000 nonmarital cash. Of course, she can not be expected to live off of them to depletion while her husband earns substantially more income. Yet, she can not expect that his earnings alone can support the same standard of living enjoyed during the marriage now that all has been divided. Fortunately, these parties have little debt other than the mortgage which the husband is assuming with the marital residence. Currently, wife is earning approximately \$11,232 gross. Her husband, after the payment of child support, earns substantially more than her. She will have expenses once she moves from the marital residence. The fact that she has not incurred those expenses yet is not a basis to deny maintenance. Likewise, her expenses are required by the economics of this marriage to be reasonable in light of the above discussion.

Wife is entitled to permanent maintenance subject to modification and termination pursuant to section 510 of [the Act] in the amount of \$2,900.00 monthly."

¶ 13

On March 13, 2013, Joseph filed a motion requesting the court to reconsider its award of permanent maintenance to Susan, arguing Susan failed to present any evidence of her actual need

for maintenance. On March 22, 2013, the trial court entered a judgment for dissolution of marriage, incorporating the rulings contained in its February 20, 2013 written order. On April 9, 2013, Joseph filed an amended motion to reconsider, again challenging the award of maintenance. The court denied Joseph's motion to reconsider on June 7, 2013. Joseph appeals.

¶ 14

#### ANALYSIS

¶ 15

On appeal, Joseph argues the trial court abused its discretion by awarding permanent maintenance to Susan in the amount of \$2,900 per month, rather than awarding rehabilitative maintenance in a lesser amount. Susan responds the trial court properly awarded her permanent maintenance in the amount of \$2,900 per month.

¶ 16

As a general rule, a trial court's determination as to the award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). The amount of a maintenance award lies within the sound discretion of the trial court, and a reviewing court will not reverse that decision unless it constituted an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where 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 disturbed unless they are against the manifest weight of the evidence. *Nord*, 402 Ill. App. 3d at 294.

¶ 17

Section 504 of the Act sets out 12 factors a trial court should consider when awarding maintenance. 750 ILCS 5/504(a) (West 2012). The factors include: (1) the income of each party, (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, (5) the time necessary to enable the party seeking maintenance to acquire education, training, and employment, (6) the standard of living established during the marriage, (7) the duration of the

marriage, (8) the age and physical and emotional condition of the parties, (9) tax consequences of the property division, (10) contributions by the party seeking maintenance to the education, training, career or career potential of the other spouse, (11) any valid agreement of the parties, and (12) any other factor the court finds to be just and equitable. 750 ILCS 5/504(a) (West 2012). The trial court has wide latitude to consider the needs of the parties when awarding maintenance (*In re Marriage of Schiltz*, 358 Ill. App. 3d 1079, 1084 (2005)), and no one statutory factor is dispositive. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157 (1993).

¶ 18 Joseph contends the trial court failed to consider a number of the relevant statutory factors. Specifically: the income and property of the parties, the parties' needs, the present and future earning capacity of each party, the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, the standard of living established during the marriage, and the age and physical and emotional condition of the parties.

¶ 19 The case law provides, a spouse seeking maintenance should not be required to sell assets or impair capital to maintain herself in a manner commensurate with the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet both his needs and the needs of his former spouse. *In re Marriage of Drury*, 317 Ill. App. 3d 201, 207 (2000). The evidence at trial established that, at the time of the hearing, Susan grossed around \$11,232 per year compared to Joseph's annual salary of approximately \$200,000. Susan's share of the marital estate had a value of \$700,000. However, as a result of the divorce, Susan would need to secure comfortable living accommodations and pay for her own health insurance. We agree with the trial court that, given Susan's age, education, and training, it is unlikely she could attain a position with the same income potential as Joseph. Contrary to Joseph's assertions on appeal, the trial court's well-written and methodical order, set forth at length in paragraph 12,



above, not only itemizes but also addresses each of the statutory factors involved in its determination of the maintenance award in this case.

¶ 20           Next, we consider Joseph’s argument that the award of maintenance in this case, should have been “rehabilitative or reviewable,” rather than permanent. 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 Smith*, 2012 IL App (2d) 110522, ¶ 44. In lengthy marriages in which the recipient of maintenance served as caregiver for the children, Illinois courts give consideration to a more permanent award of maintenance. *Nord*, 402 Ill. App. 3d at 305.

¶ 21           Although Susan worked in administrative positions during the first few years of the marriage, she left the work force to be a stay-at-home mother while Joseph continued to work for the same company throughout the duration of the marriage. Other than Susan’s failed attempt at running an interior design business, and her recent part-time employment, she had not worked outside the home for approximately 17 years. Although the trial court noted it expects Susan to obtain employment that “will help contribute to her economic needs,” the goal that a spouse obtains employment is balanced against the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage. *Id* at 306. When the facts make it clear one spouse is unable to support herself in the manner in which the parties lived during the marriage, it would be an abuse of discretion to award only rehabilitative maintenance. *Id*.

¶ 22           The record is devoid of any evidence establishing Susan is employable at an income that would provide anything near the standard of living enjoyed during the marriage. Consequently, we conclude the trial court did not abuse its discretion when it awarded permanent maintenance

to Susan. As properly noted by the trial court, the award of permanent maintenance, in this case, may be modified or terminated upon a showing of a substantial change in circumstances pursuant to section 510 of the Act. 750 ILCS 5/510(a-5) (West 2012). For the foregoing reasons, we affirm the decision of the trial court to award Susan permanent maintenance in the amount of \$2,900 per month.

¶ 23

#### CONCLUSION

¶ 24

For the foregoing reasons, the decision of the circuit court of Tazewell County is affirmed.

¶ 25

Affirmed.