2013 IL App (4th) 120515-U

NO. 4-12-0515

FILED
July 3, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
ROBERT TURNGREN,	)	Circuit Court of
Petitioner-Appellant,	)	Champaign County
and	)	No. 99D209
PEGGY TURNGREN,	)	
Respondent-Appellee.	)	Honorable
	)	Arnold F. Blockman,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly found petitioner did not prove a substantial change in circumstances justifying a downward modification of petitioner's maintenance obligation.

¶ 2 Petitioner, Robert Turngren, filed a petition for modification or termination of his maintenance obligation to his former wife, respondent, Peggy Turngren. The parties were divorced in 2004 and the agreed settlement order provided for permanent maintenance of $7,200 per month. Petitioner argued respondent, while employed, has not made any efforts to increase her employment skills or tried to find better paying employment and has provided monetary support for the parties' three adult children. The trial court found petitioner's income had doubled while respondent's income had increased modestly. Further, the marriage was of 26 years duration during which respondent had been a full-time mother and homemaker and the parties had a comfortable standard of living. Respondent received minimal cash or equity from the property settlement except for a future interest in petitioner's defined benefit retirement plan. The court found no showing of a substantial change of circumstances warranting a downward modification of maintenance. Petitioner appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Robert and Peggy Turngren were married on June 10, 1978, shortly after each graduated from the University of Illinois. Peggy earned a degree in interior design and worked for approximately one year at K-Mart selling large appliances until the birth of the parties' first child. Robert, on the other hand, continued his studies in medical school, first in Urbana and then in Rockford. From 1982 to 1985 the parties lived in Decatur while Robert completed his residency. In 1985, the parties moved to Monticello and purchased the family home. In Monticello, Robert established a family medicine practice through employment with Carle Clinic. He continued employment with Carle Clinic until 2001, advancing steadily within the organization and serving on the board. In 2001, Robert became employed with Centegra Health System and moved to Woodstock where he remained employed until 2010. After obtaining a master's degree in business administration, Robert was hired by Meriter Health Services in Madison, Wisconsin, in February 2010 in an administrative capacity.

¶ 5 Peggy did not work outside the home after the birth of Erik, the parties' first child in 1980, other than work at a preschool as noted below. Two more children were born to the parties in 1982 and 1983, Travis and Kyle, respectively. Peggy took care of the children and the home throughout the marriage. All three sons played ice hockey and the family's passion for hockey dominated their leisure time. The boys played travel hockey and most of the family's vacation trips revolved around hockey camps and tournaments. The family also attended college hockey games and professional hockey games in Chicago. Until there were too many conflicts with hockey, the family also had season tickets for University of Illinois football games every season. In addition to her family duties, Peggy was active in community organizations which helped her husband establish his new branch of Carle Clinic in Monticello. Peggy did work outside the home for two years when she worked part-time at a preschool two of her children attended.

¶ 6 In 1998, the parties first separated. From 1998 to 2001, Robert voluntarily paid Peggy $4,500 biweekly. At that time the parties' children were aged 18, 16, and 14. Robert's payment was intended to cover household expenses, support of the children, and room and board for Erik and Travis who both attended the University of Illinois. In August, 1999, Peggy went back to work and began full-time employment with Monticello Drugs in Monticello. Peggy worked the cash register, greeted customers, restocked shelves and delivered prescriptions to those unable to get to the store.

¶ 7 In 2001, Robert began employment at Centegra Health System and moved to Woodstock. From 2001 to 2004, Robert's net monthly income was approximately $14,000 and he provided $9,000 a month to Peggy.

¶ 8 In March 1999, Robert filed a petition for dissolution of marriage. The parties' marriage was not dissolved until July 29, 2004, when the parties entered into an agreed property settlement. The settlement, as approved by the trial court, awarded Peggy the former marital residence. Robert was awarded the home he purchased in Woodstock. Each party received a vehicle as did each of the parties' children. Robert assumed all of his credit card debt totaling approximately $53,339 as well as the children's school loans which totaled approximately $56,866. Robert agreed to pay ongoing tuition, fees, books, room board, and car insurance for the parties' sons. Peggy received 66% of Robert's pension through Carle Clinic. The parties also agreed Robert would pay $7,200 per month in permanent maintenance to Peggy. At that time, Robert had an annual gross income of approximately $275,000 per year while Peggy, still employed at Monticello Drugs, earned approximately $24,232 per year. Peggy assumed the credit card debt in her name totaling approximately $15,000.

¶ 9 On August 11, 2010, Robert filed a petition for modification or termination of maintenance. He alleged a substantial change in circumstances had occurred in that (1) Peggy's reasonable needs are less than the amount of maintenance ordered along with her income and other assets; (2) Peggy is supporting one or more of the parties' adult children and none of the children are disabled; (3) current maintenance is exorbitant as it is more than is required to maintain an appropriate standard of living; (4) Robert is paying significant sums for college loan payments for the children; (5) Robert remarried; (6) Peggy has not made any efforts to become self-supporting; (7) Peggy has refused or failed to secure employment allowing her to be self-sufficient; and (8) Peggy's income has increased.

¶ 10 Evidence was heard on the petition on November 16 and 18, 2011, and January 6 and 9, 2012. Robert testified he is currently the president of Meriter Medical Group based in Madison, Wisconsin. The group employs 100 physicians and 16 providers. His current base salary is $417,000 per year. His biweekly paycheck shows gross biweekly income of $16,085.29 or $418,217.54 per year. In addition to his base salary, he will also receive a bonus for 2011 of between 12 1/2% and 35% of his salary. He stated his 2011 bonus will probably be around

$100,000 to $120,000. Robert's joint tax return for 2011 showed income of $579,000 and taxable income of $556,000. He estimated his gross income in 2012 will be approximately $570,000.

¶ 11 Robert married Nancy Turngren in November, 2004. Nancy testified she is employed at Centegra with a current income of $84,000 per year. She receives income from farmland of around $10,000 per year. However, in 2010 she received $34,326 from the farmland and in 2011 will receive a gross farm income of approximately $30,000. She also receives $1,000 per month in child support from her former husband and her employer reimburses her $6,000 per year to attend graduate school. Nancy testified the market value of her farmland is approximately $200,000.

¶ 12 In October 2011, Robert received a one-time $50,000 relocation bonus to allow him to move to Madison, Wisconsin. The house he owns in Woodstock, for which he paid $440,000 in 2001, will have to be sold for approximately $100,000 less than what is owed on it. He will use his relocation bonus to help make up the shortfall. Both Robert and Nancy testified they have contacted a builder in Madison and plan on building a new home for approximately $700,000.

¶ 13 Robert had debts for the following:

2009 Mercedes Benz	$ 37,000
HSBC (furniture/appliances)	$ 2,000
Chase (credit card)	$ 3,800
Key Bank (educational loan)	$ 21,032
Great Lakes (educational loan)	$ 15,728

Mortgage on Woodstock home	$485,000

Robert had assets, including $2,000 in stock, a 2009 Mercedes Benz valued at $43,000, a home in Woodstock valued at $380,000, a 2005 Toyota Avalon, and ING savings account with a balance of approximately $114,000. He has a 401(k) account with Fidelity valued at $138,628 and another with Great West valued at $39,321. He also has a deferred compensation plan at Great West valued at $43,181. Finally, he is entitled to receive one-third of the defined benefit plan from Carle or $1,203.23 per month commencing in August 2021.

¶ 14 Peggy is still working for Monticello Drugs and makes $2,729.75 per month or $32,877.00 per year. She is now eligible to participate in a 401(k) plan though her employer and voluntarily contributes $650 per month. Her employer contributes a small percentage per month. Peggy noted the following debts:

Mortgage on Monticello home	$196,370.55
Car loan	$ 12,456.37
VISA credit card	$ 2,822.90
Discover credit card	$ 1,660.30
Mastercard credit card	$ 107.53

Peggy's assets include the house in Monticello valued at $210,000, a 2008 Nissan Pathfinder valued at $25,000, cash value of a life insurance policy of $519, a checking account of $2,858.06, a money market account of $10,679.42, a Schwab 401(k) of $34,185.28, a Roth individual retirement account (IRA) of $1,027.63 and a First Bank IRA of $4,590.73 and personal property of $1,000. She testified she will receive the sum of $2,404.46 per month from the Carle defined benefits plan commencing in August 2021. Her employer does not provide health insurance and she pays $270 per month for a major medical policy.

¶ 15 At the time of the dissolution of marriage, Peggy listed monthly expenses of $9,848 and at the hearing on the petition she listed her monthly expenses as $7,305.89. She also testified the Monticello home had many deferred maintenance needs because it was a 27-year-old home. There was modest equity in the home. During the marriage, the parties paid only interest on the mortgage.

¶ 16 Peggy allowed the three adult children of the parties to use her credit cards when needed. She testified they paid her back mostly in cash. Evidence showed they used her credit cards for items ranging from tickets for University of Illinois sporting events to Chicago Bears tickets to extra protective gear for Kyle's job in law enforcement. She also testified she took cash regularly from maintenance payments and kept approximately $5,000 at a time so she always had the money she needed to make estimated income tax payments and real estate tax payments when due. This was her method of bookkeeping so she knew she would have the money when she needed it.

¶ 17 Peggy's monthly expenses included large grocery bills. She testified she divided her yearly bills into monthly amounts and they were enlarged due to expenditures for tailgate parties she threw for friends and family throughout the fall for University of Illinois football games. Peggy stated she had not taken an out-of-state vacation since the dissolution of her marriage but enjoyed socializing at tailgate parties. She also spent lavishly on her first grand-child, the daughter of the parties' son Erik and his wife.

¶ 18 The trial court found Robert failed to show a change of circumstances justifying a downward modification of his maintenance obligation. Further, the court found Robert could not argue the amount of maintenance was "excessive" when it was the same amount of permanent maintenance he agreed to eight years before. The court did not find Peggy failed to make a good faith effort to become self-supporting. The parties had a comfortable lifestyle during their marriage and Peggy was entitled to that same lifestyle now since Robert was able to afford it. Although Peggy had not sought out any extra education or skill training, she had kept her job during a severe recession when many other people lost theirs and is still working in it full-time. The job is not high paying nor does it provide health insurance, but she has received steady raises and is now benefitting from a 401(k) plan. Although possessed of an undergraduate degree in interior design, Peggy never worked in that field and did not work at all for many years while she cared for the children and the home of parties. Finally, the court found Peggy did not spend exorbitant sums of money on the children of the parties. Her expenses had actually decreased over the years and the court found her expenses simply showed a comfortable standard of living.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Robert argues on appeal the trial court erred in finding no change of circumstances existed to support a downward modification in maintenance. He brought his original petition for either a modification or termination of his maintenance obligation. Prior to trial, he specifically abandoned count II of his complaint asking for termination of maintenance and proceeded to trial and on this appeal on the sole issue of modification of maintenance.

¶ 22 A trial court's ruling on a request to modify maintenance will not be disturbed absent an abuse of discretion. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1003, 883 N.E.2d 535, 540 (2008).

¶ 23 Modification of a maintenance award is governed by section 510 of the Illinois Marriage and Dissolution of Marriage Act, which states in pertinent part:

> "(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors:
>
> (1) any change in the employment status of either party and whether the change has been made in good faith;
>
> (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;
>
> (3) any impairment of the present and future earning capacity of either party;
>
> (4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;
>
> (5) the duration of the maintenance payments previously paid (and remaining to be paid)

relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment *** and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment ***; and

(9) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5) (West 2010).

¶ 24 The factors to be considered under section 504(a) include "all relevant factors" and specifically:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(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 capac-

ity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2010).

A dependent former spouse is entitled to live in some approximation to the standard of living established during the marriage unless the other former spouse's financial situation dictates otherwise. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 833, 633 N.E.2d 82, 95 (1994).

¶ 25 A party seeking modification of maintenance has the burden of showing a substantial change of circumstances. *In re Marriage of Hucker*, 259 Ill. App. 3d 551, 555, 631 N.E.2d 299, 302 (1994). Robert argues a former spouse receiving maintenance is under an affirmative obligation to seek appropriate training and skills in order to become financially independent and failure to make good faith efforts to achieve this goal may be grounds for modification of maintenance. *Id.* Further, he contends Peggy's income has increased while her reasonable needs are less than while the parties were married and the maintenance obligation exceeds those needs. Robert further argues Peggy's current standard of living exceeds the standard established during the marriage and she voluntarily supports the parties' adult children or voluntarily gives away her income to them.

¶ 26 Taking into consideration all of the section 504(a) and section 510(a-5) factors, we find the trial court did not abuse its discretion in finding Robert failed to meet his burden of showing a substantial change in circumstances justifying a downward modification in his maintenance obligation. Peggy's financial situation has improved since 2004 and the present but only minimally. She has the same job with the same employer and no benefits although she now has access to a 401(k) retirement plan. Her gross income increased from $25,453 in 2004 to $32,877. Peggy had $15,000 in credit card debt in 2004 and now has over $17,000 in credit card and car loan debt. She still lives in the same house in Monticello worth approximately $210,000 with a mortgage of $196,370.55 as opposed to a mortgage of $217,000 in 2004. She does show an increase in her checking account and cash accounts as well as her retirement accounts. Peggy's income has only increased by approximately $7,000 annually over eight years. Her maintenance payments have remained the same. Her increases in income have been outweighed by increases in inflation during the eight-year interval.

¶ 27 Robert has substantially improved his financial situation. In 2004, his gross income was $275,000 while in 2011 and 2012 his gross income was between $570,000 and $579,000, more than doubling in eight years. Further, Nancy earned approximately $76,000 in 2004 while now she earns $81,000 per year. In 2004 her farm income was only $10,000 per year while it was $30,000 in 2011. In 2004 Robert listed his debt load at over $604,000 while his debt load at present is $564,500. In 2004 he made no 401(k) contributions but now makes such contributions in the amount of $22,000 per year. In 2004 he drove a 1997 Oldsmobile Aurora. Today he drives a 2009 Mercedes Benz and a 2005 Toyota Avalon. Robert's retirement accounts increased from a $500 IRA and his future interest in Carle's defined benefit plan in 2004 to a 401(k) valued at $138,628, a 401(k) valued at $39,321 and a deferred compensation plan valued at $43,181 in addition to the Carle plan. He had a $5,000 checking account in 2004 and now has an ING savings account of $114,600.85. In addition, Robert and Nancy are anticipating moving to Madison, Wisconsin, and spending $700,000 to build a new home. Robert's overall financial situation has significantly improved in the past eight years.

¶ 28 The parties' relative financial situations need to be weighed against their long-term marriage of 26 years. Three children were born of the marriage and the family had a comfortable standard of living. Peggy maintained the parties' home and took care of the children while also engaging in community activities enhancing Robert's name recognition and helping him establish his medical practice and Carle's facility in Monticello. Peggy received minimal cash or equity from the property settlement except for a future interest in the Carle defined benefit plan.

This is the classic case for permanent maintenance. Robert agreed to pay $7,200 per month in maintenance in 2004 when his yearly salary was half of what it is now. It is difficult to see how Robert can make an argument the maintenance amount is excessive given he agreed to the amount and his financial situation has shown marked improvement while Peggy's financial situation has shown only relatively small improvement.

¶ 29 The financial settlement agreement provided for permanent maintenance for Peggy but did not specifically provide the maintenance was reviewable at certain times or under certain circumstances. It did not require Peggy to acquire additional education or job training. Peggy still has an affirmative obligation to seek appropriate training and skills to reach financial independence. See *Hucker*, 259 Ill. App. 3d at 555, 631 N.E.2d at 302. However, this factor is only one of many to be considered in determining an award of maintenance and its duration. *Id.* Although Peggy has not sought any education or job training skills in the eight years since the original maintenance award, she has worked full-time at a job to which her skills are well-suited. She actually began this employment five years prior to final dissolution of marriage. Her job responsibilities have increased over the years, she has received yearly pay increases and now has a 401(k) plan with employer contributions. Most importantly she has kept her job while others at that drug store have been laid off during the recent dip in the economy.

¶ 30 Finally, Robert argues Peggy spends large amounts of money paying for expenses of the parties' adult children. Her total expenses have actually decreased since 2004 so the money she has spent on her children and, now, grandchildren, has not contributed to large total expenditures. Also, the parties when together spent freely on their children during their marriage and this included the use of credit cards by the children while they were in college or prep school.

¶ 31 Robert tried to show Peggy's expenditures were lavish compared to the style of living the parties enjoyed during their marriage. But a review of the evidence shows Peggy lives a comfortable lifestyle just as she did during the parties' marriage.

¶ 32 The evidence does not support a finding of an abuse of discretion on the part of the trial court in finding Robert failed to prove a change in circumstances and denying Robert's petition to reduce his maintenance obligation.

¶ 33 We commend the trial court's order, which we found most helpful.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment denying petitioner's request to reduce maintenance.

¶ 36 Affirmed.