2014 IL App (4th) 130945-U

NO. 4-13-0945

FILED
May 28, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF CAROL S. EKISS,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	Macon County
MARK S. EKISS,	)	No. 12D30
Respondent-Appellant.	)	
	)	Honorable
	)	Katherine M. McCarthy,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) If the trial court erred by awarding a house to petitioner while simultaneously classifying it as respondent's nonmarital property, it is an error that respondent invited, and therefore he is in no position to complain of it on appeal.

(2) The award of maintenance is neither an abuse of discretion nor against the manifest weight of the evidence.

¶ 2 This is an action for the dissolution of a marriage. Carol S. Ekiss is the petitioner, and Mark S. Ekiss is the respondent.

¶ 3 For two reasons, respondent appeals. First, he argues the trial court lacked statutory authority to award petitioner the marital residence, 112 West Oak Lane in Decatur, since the court found it to be his nonmarital property. Respondent admits proposing that 112 West Oak Lane be awarded to petitioner, but he insists that he conditioned this proposal on his receiving 100% of a separation benefit from American Family Insurance. When we review the

record, however, we find that is not the proposal respondent *ultimately* made to the court. Ultimately, after being reminded of a deed in which he quitclaimed 112 West Oak Lane to petitioner, he proposed awarding that property to her as well as dividing the separation benefit with her. Also, when the court specifically asked the parties if they wanted 112 West Oak Lane reclassified as something other than respondent's nonmarital property, respondent replied that would be unnecessary because he did not care one way or the other. Thus, if the court erred in this respect, it was invited error.

¶ 4 Second, respondent argues that the $3,000 a month in maintenance that the trial court ordered him to pay is $1,000 a month too high. We are unconvinced, however, that the award of maintenance in the amount of $3,000 a month is either an abuse of discretion or against the manifest weight of the evidence. Therefore, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. The Three Marriages

¶ 7 The parties have been married to each other three times. The first marriage was from June 26, 1976, to December 10, 1982. According to a marital settlement agreement, which was incorporated into the judgment dissolving the first marriage, respondent was to receive the marital residence, 112 West Oak Lane, on condition that he pay petitioner $7,580.96 for her equity interest in the property. Respondent made the payment, but petitioner never deeded the property into his sole ownership.

¶ 8 Their second marriage was from January 17, 1986, to July 15, 1988. Upon the dissolution of that marriage, the trial court again awarded respondent the sole ownership of 112 West Oak Lane.

¶ 9 In the fall of 1992, the parties were living together, and petitioner became

pregnant with their first child. They remarried each other on February 2, 1993. The first child, Brian Ekiss, was born on March 20, 1993. A second child, Craig Ekiss, was born to them on June 19, 1994.

¶ 10 Both children are now adults. They are attending college, and their parents are supporting them. Petitioner is paying for their health insurance. Respondent is paying their college expenses. In this action to dissolve the third marriage, no claim is being made for post-majority educational expenses.

¶ 11 B. Position Statements, Which the Parties Filed Before the Trial

¶ 12 1. *Respondent's Position Statement*

¶ 13 a. The Separation Benefit

¶ 14 In his own position statement, which he filed on May 10, 2013, respondent told the trial court he was working for American Family Insurance and although he was not an employee of the company, he had a contractual right to a "separation benefit," a benefit the company would pay to him when he ended his business relationship with the company. The separation benefit would be "calculated based on the renewals and service fees which [his] agency [received] during the last year of service prior to separation." He explained:

> "c. It is important to note that if [respondent] separates from the company prior to his 60th birthday his separation benefit will be paid out over 60 months in 60 equal installments. However, if he works through his 60th birthday, and then separates, the amount otherwise payable will be annuitized and paid to him over his lifetime. Such action would result in a smaller payment because the formula used to annuitize the payment takes

into account the life expectancy tables of the independent contractor."

¶ 15 In his position statement, respondent did not propose dividing the separation benefit between himself and petitioner.

¶ 16 b. 112 West Oak Lane

¶ 17 Even though respondent described 112 West Oak Lane as "his non-marital estate," he proposed that the trial court award this property to petitioner. He represented that because this property was unencumbered, "[t]his award should be the equivalent of a transfer of $142,000.00 of non-marital cash to [petitioner] by [respondent]."

¶ 18 c. Maintenance

¶ 19 Respondent argued that if the trial court "ordered [him] to pay maintenance indefinitely into the future, it would lock him into a decision of postponing his retirement past his 60th birthday without knowing what his health situation would be." Therefore, he proposed that the court order him to pay maintenance in the amount of $2,000 per month not indefinitely but only until the month before he reached his 60th birthday. At that point in time, he could "realistically assess whether he should retire and take his separation rights from American Family Insurance or whether he should continue working past his 60th birthday, and take [the] separation agreement in an annuitized form with fewer dollars per month upon his retirement."

¶ 20 2. *Petitioner's Position Statement*

¶ 21 a. The Separation Benefit

¶ 22 In her position statement, which she filed on May 10, 2013, petitioner pointed out that respondent began working for American Family Insurance in May 1992 and that, upon the expected dissolution of the parties' present marriage, he would have worked for 21 years as an

agent or independent contractor of American Family Insurance. The third marriage would have existed for 20.25 years of those 21 years. Thus, petitioner reasoned that 96.4% of the separation benefit was marital property (20.25 divided by 21 times 100 equals 96.4).

¶ 23 b. 112 West Oak Lane

¶ 24 Petitioner claimed that her "personal residence," 112 West Oak Lane, was marital property, not respondent's nonmarital property. She proposed that the trial court award this property to her.

¶ 25 c. Maintenance

¶ 26 Petitioner also requested permanent maintenance in the amount of $4,000 per month.

¶ 27 C. The Trial (May 15, 2013)

¶ 28 1. *Petitioner's Testimony*

¶ 29 a. Direct Examination

¶ 30 Petitioner testified she was 56, the same age as respondent, and that her employment income was $17,659 in 2010 and just under $18,000 in 2011, compared with his net income of $149,569 in 2010 and $141,540 in 2011.

¶ 31 She testified that her financial affidavit, which she filed on May 10, 2013, accurately reflected what she had been spending to meet her needs each month but that it "represent[ed] basically a downgrade from what [she] and [respondent] spent when [they] were together." Between the two of them, their income was more than $160,000 per year while they were together, whereas now she was "getting by on under $30,000 in income." Their standard of living used to be comfortable. She estimated, for instance, that respondent spent a total of $50,000 to $60,000 over the years for various "collectibles," *e.g.*, car parts, baseball cards,

Beanie Babies, and memorabilia associated with the National Association for Stock Car Auto Racing (NASCAR).

¶ 32 b. Cross-Examination

¶ 33 Although petitioner testified, on direct examination, that her financial affidavit represented a "downgrade" from the standard of living she had enjoyed when living with respondent, she answered yes, on cross-examination, to the following questions by respondent's attorney, James P. Brinkhoetter, Jr.:

> "Q. Your financial affidavit provides a list of expenses that's necessary for you to live at this present standard of living, which you've enjoyed during the marriage; isn't that correct?
>
> A. Yes.
>
> Q. There isn't anything over and above that that you actually need to continue to live at the standard of living to which you've become accustomed; is that false or correct?
>
> A. Yes."

¶ 34 Petitioner admitted that if the trial court awarded her 112 West Oak Lane, where she had been living for the past 20 years, she would have no mortgage or rent to pay. She disagreed, however, that her "only burden" would be the real-estate taxes. She would have to repair the roof, which was "falling off," as well as make "other repairs" to the house.

¶ 35 She admitted that the $203 she had listed for telephone expenses included the "smartphones" she had given her sons as Christmas presents.

¶ 36 She admitted that one of her sons, Brian Ekiss, who lived in one of the rental properties the parties owned, 7 Fairview Place, occasionally came over to her residence to eat at

her expense. The other son, Craig Ekiss, lived with her.

¶ 37 c. Redirect Examination

¶ 38 On redirect examination, petitioner's attorney, Kent A. Rathbun, asked her:

"Q. Looking at your financial affidavit, *** you have listed $2,046 a month in expenses?

A. Yes.

Q. And I think you told me that this is not equivalent to the kind of lifestyle that you and [respondent] had while you were together. And then I think you told Mr. Brinkhoetter that it does afford you that same lifestyle. Is there some confusion here?

A. I am confused. Yes."

¶ 39 Rathbun then questioned her about expenses she had left out of her financial affidavit. It listed nothing for clothing. She was not "able to buy clothes the way [she] could when [she and respondent] were together." It listed nothing for gifts to the children. It listed nothing for entertainment, although she played golf. It listed nothing for "gas, oil, and repairs," whereas respondent listed $700 a month for those items. It listed nothing for real-estate taxes.

¶ 40 Rathbun asked her:

"Q. *** What you do show is $2,046 a month [in living expenses], which is slightly more than $24,000 a year. And yet your take-home pay only works out to about seventeen five a year. So you can't live even with this bare-bones list of expenses without help from [respondent], can you?

A. Correct.

Q. And if you were, for example, to pay $55 a month until you paid $3,900 for—I'm sorry—a week until you've paid for the roof repairs, then that might be a year and a half you didn't have money for health insurance?

A. Correct."

¶ 41 2. *Respondent Proposes a Quid Pro Quo*

¶ 42 In the trial, respondent proposed that petitioner receive 112 West Oak Lane—even though he alleged it was his nonmarital property—and that, in return, he receive 100% of the American Family separation benefit. Brinkhoetter asked him:

"Q. Are you asking the Court to consider that your transfer of your non-marital asset worth $142,000 [(*i.e.*, 112 West Oak Lane)] is a fair tradeoff for your receiving 100 percent interest in the separation benefit from American Family Insurance?

A. Yes."

¶ 43 D. The Memorandum of Judgment of Dissolution of Marriage

¶ 44 On June 21, 2013, the trial court filed a "Memorandum of Judgment of Dissolution of Marriage." At the conclusion of the memorandum, the court directed Rathbun to draft a judgment of dissolution consistent with the memorandum.

¶ 45 In the memorandum, the trial court decided that petitioner was to be awarded 112 West Oak Lane. The memorandum remarked: "[P]arties agree this is [respondent's] *non-martial* [*sic*] property and that [petitioner] should receive sole ownership." (Emphasis in original.)

¶ 46 As for the separation benefit, the memorandum agreed that 96.4% of it was marital property. The memorandum adopted petitioner's proposal that she "receive $118,994.23

from any American Family Insurance buyout otherwise payable to [respondent]" and that whenever respondent became "eligible to receive such buyout or any portion thereof, *** he be ordered to direct American Family to pay $1,983.24 per month to [petitioner] for a period of 60 months."

¶ 47 The memorandum also decided, in part because of the "great disparity in income between the parties"—*i.e.*, respondent's annual net income of $160,000 compared with petitioner's annual net income of "under $20,000"—that respondent should pay petitioner $3,000 a month in maintenance. This maintenance, however, was "to be reviewed by the Court prior to [respondent's] 60th birthday so that the Court [would have] a better understanding as to his decision on retirement."

¶ 48 E. Respondent's Motion for Reconsideration and Clarification

¶ 49 On July 17, 2013, before the trial court actually entered a judgment of dissolution, respondent moved for reconsideration and clarification.

¶ 50 On July 30, 2013, the court held a hearing on his motion. In the hearing, Brinkhoetter informed the trial court that Rathbun recently sent him a copy of a deed. In this deed, which dated from 2001, respondent quitclaimed to petitioner all his interest in 112 West Oak Lane. (During oral arguments, counsel for petitioner said that the correct year of the quitclaim deed was 2001 although he mistakenly said in his brief that it was 2003. Counsel for respondent apparently agrees that 2001 is the correct year.) Brinkhoetter told the court:

> "MR. BRINKHOETTER: Okay. And then going back to my Motion to Reconsider. I started out my Motion to Reconsider by this long speech about how unfair it is for [respondent] to be giving this marital property—non-marital property [(112 West Oak

Lane)] to [petitioner], and then for that fact to be ignored.

And then later on, Mr. Rathbun sent me a copy of a quitclaim deed that [respondent] had signed; that is in 2003 [*sic*]. And I've got a copy of that deed in my possession. And I went and checked it at the recorder's office this morning. And not that I mistrust Mr. Rathbun or anything, but I wanted to see what it was in connection with.

And apparently it was in connection with a number of mortgages. He had mortgaged this same piece of property no less than seven or eight times. And he always just uses the money to go do whatever he needs the money for, and then he repays the mortgage. Right now—and this is not—there's no dispute that this property is owned free and clear today and without any liens and so forth, and that [respondent] has designated this to be awarded to [petitioner].

And then I attached a table to that paragraph two [in the motion for reconsideration] showing the disparity and the distribution of the marital assets to the parties reciting that [respondent] gets 29 1/2 percent, and [petitioner] gets 70 1/2 percent. And if you assume that I was just dead wrong on how the title to that property goes, and still if you—if you redo the table and redistribute the numbers instead of deducting 142,000 from [respondent] and giving 142,000 to [petitioner], you would deduct

$71,000 per month [*sic*] and give [petitioner] only a hundred—seventy-one thousand. You still have a disparity of 55 percent to 45 percent. So it's only a difference of degree.

THE COURT: Okay.

MR. BRINKHOETTER: But it's still—it's still a disparity. And then I don't want to dwell on that too much, cause it really was a—

THE COURT: Well, looking at the table, can you tell me where the Sears retirement is in your table?

MR. BRINKHOETTER: That's non-marital property. The Court ruled it's non-marital property.

THE COURT: Same as this Oak Lane property?

MR. BRINKHOETTER: Well, as it turns out, it's not non-marital property according to this deed that I've got a copy of. And Mr.—and nobody disputes that deed exists.

The evidence in this case is that it was all non-marital 100 percent to [respondent] and zero owned by [petitioner]. And it turns out that that is not the case. And I'm not gonna sit here and make Mr. Rathbun go and reopen the file and ask for leave to—for the Court to take judicial notice of a deed. It's pointless and a waste of time. So let's just assume that the deed does exist, and it was transferred for the purpose of accomplishing some mortgages that have happened on again and off again over the years.

THE COURT: And I thought that my notes showed that the parties agreed it was non-marital property.

MR. BRINKHOETTER: It is. It was agreed that it was non-marital.

THE COURT: Yeah.

MR. BRINKHOETTER: So the evidence is that it was non-marital.

THE COURT: I didn't make that determination.

MR. BRINKHOETTER: No.

MR. RATHBUN: No. There was no evidence presented on that, Judge. He said it was non-marital, and he wanted her to have it.

THE COURT: Right.

MR. RATHBUN: That's fine with us."

¶ 51 In this hearing on respondent's motion for reconsideration, Brinkhoetter did not take the position that his client should receive 100% of the separation benefit in return for petitioner's receiving 112 West Oak Lane, which his client quitclaimed to her in 2001. Instead, he merely expressed the following three concerns regarding the separation benefit.

¶ 52 First, Brinkhoetter was concerned that, under the terms of the proposed judgment, it was unclear who should pay the income taxes on the $118,094.23 in separation benefits that petitioner was to receive. He suggested the judgment should make clear that petitioner alone was responsible for those taxes.

¶ 53 Second, Brinkhoetter was concerned that the proposed judgment fixed petitioner's

share of the separation benefit at $118,904.23 regardless of whether the amount of the separation benefit ultimately went up or down. According to Brinkhoetter, that placed all the risk on respondent. He explained: "[I]f his retirement goes in the tank and he gets, you know, 150,000 when he separates, before his 60th birthday, then he still has to pay her 118 of it. And that is not fair."

¶ 54 Third, Brinkhoetter was concerned that, by the terms of the proposed judgment, if respondent chose to work past his 60th birthday, he would not receive one cent of the annuity payments until petitioner "received the first $118,094.23" of them.

¶ 55 By way of alternative, Brinkhoetter suggested dividing the separation benefit by using a formula designed for qualified domestic relations orders (QDROs). He argued:

> "I think perhaps the most rational solution to this problem would be to divide the separation benefit using a conventional QDRO formula, calculate it at the time of retirement, and apply it to the amounts actually anticipated based upon the value of the separation benefit at [respondent's] retirement. That's fair. That doesn't cheat anybody. It gives [petitioner] her fair share."

¶ 56 Finally, as to maintenance, Brinkhoetter argued that the award of $3,000 a month was too high. He argued, instead, that respondent should pay only $2,000 a month in maintenance.

¶ 57 The trial court agreed that, in certain respects, its decision needed to be modified and clarified, and the court said it would do so in the judgment of dissolution. The court asked the attorneys:

> "THE COURT: Do the parties want me to correct my

memorandum to show that the Oak Lane property is marital property?

MR. BRINKHOETTER: No, I don't.

THE COURT: Because I'm hearing today it's marital, and right there I say, parties agree this is [respondent's] non-marital.

MR. BRINKHOETTER: Well, we would take the position—would have taken the position at trial that this quitclaim deed was done as an accommodation, so he could take out these mortgages. But, you know, it's half a dozen in one and six in the other.

THE COURT: I know. But I just have it in there, and now I'm hearing—

MR. BRINKHOETTER: Right.

THE COURT: —that it's marital. I just want to know. Do you want me to correct that part of it or not?

MR. BRINKHOETTER: I'll leave it to the discretion of the court. I don't think there's any question about the fact that he signed the quitclaim deed in 2003 [*sic*] for whatever reason. But that doesn't necessarily overcome the presumption of a gift either. So just leave it the way it is as far as I'm concerned."

¶ 58 Immediately before adjourning the hearing, the trial court remarked it was unsure how respondent's Sears retirement plan should affect the disposition. The court said:

"THE COURT: And I have my own chart. So I'm still not

sure where the 180,000 in the Sears retirement has come into play, Mr. Brinkhoetter.

MR. BRINKHOETTER: Well, the Sears retirement—

THE COURT: Yeah. I don't show it anywhere on—

MR. BRINKHOETTER: Well, it's not there, because it isn't included as a—it's a—the Court didn't have any power to award it to anybody but [respondent], because it was already his property before the third marriage.

THE COURT: Right.

MR. BRINKHOETTER: And I don't really think it should play into this thing at all. As I don't think that the—

THE COURT: I agree.

MR. BRINKHOETTER: I didn't think that the marital house should play into it either."

The "marital house" was 112 West Oak Lane.

¶ 59 F. The Ruling on Respondent's Motion for Reconsideration

¶ 60 In an order entered on August 30, 2013, the trial court granted respondent's motion for reconsideration in part and denied it in part. Under the heading of "American Family Separation Agreement," the court stated:

"As the Court previously indicated, it is very difficult to determine the value of the separation benefit at this point in time since it is to be based on [respondent's] last year of service prior to his separation from the company. The payout of benefits is very

different depending on whether he retires prior to the age of 60 or after the age of 60. The Court's prior ruling only addressed the situation should [he] retire prior to the age of 60 (see paragraph 6 [*sic*]). Although not proposed by [respondent] in his Statement of Position filed with the Court, the Court agrees that the parties' separation benefit amount would be better determined at the time of [his] retirement so that the value of the benefit is known. Therefore, the Court's ruling as to the separation benefits from American Family is modified as follows:

> Upon [respondent's] retirement, [petitioner] is to receive 48.2% of each payment [respondent] receives which represents her one half share of the *marital* portion of his retirement benefit. (96.4% is considered *marital*) Each party is to pay taxes on their portion. In this manner, each party shares equally in the risk of [respondent's] business decreasing in value as well as each party enjoys the benefit of any increase in value." (Emphases in original.)

¶ 61 Under the heading of "Maintenance," the trial court stated: "Court confirms its award of temporary maintenance to [petitioner] in the amount of $3,000.00 per month which is reviewable immediately prior to [responent's] 60th birthday so that the Court has a better understanding as to his decision on retirement (reviewable in September 2016). Although [he] feels that the

Court merely split the difference between what [she] was requesting and what [he] had offered to pay as maintenance, that is simply not true. In this case, [her] monthly income is now approximately $5,100.00 ($3,000.00 per month in temporary maintenance; $760.00 rental income and $1,348.00 per month wages). On the other hand, [his] monthly income based on an annual net salary of $160,000.00 is approximately $8,328.59 per month less $3,000.00 to be paid to [her] in temporary maintenance ($5,328.59).

The Court then reviewed the parties' monthly expenses. Although [respondent's] monthly expenses listed on his Financial Affidavit claim to be $5,654.85, [petitioner's] are only $2,046.00. In light of [respondent's] testimony that he has a girlfriend living with him who contributes to his expenses, the Court found his monthly expenses to be unreasonably high based on that contribution. Furthermore, [petitioner's] monthly expenses are for herself as well as for one of their adult children who is living with her. [Respondent] has food and restaurant expenses totaling $1,300.00 per month compared to [petitioner's] expenses for two persons of only $740.00. Either [respondent] is living at a much higher standard of living than [petitioner] or his expenses are inflated. [She] has nothing listed for new clothes compared to [his] monthly expense of $250.00. [He] has $700.00 a month listed for

gas and car repairs compared to [her] expenses of $200.00. Parties appear to be contributing approximately $1,600.00 per month to their children's educational expenses ([petitioner]—$300.00; [respondent]—$1,300.00). Once Brian graduates from Milliken, and moves out of the rental property, [respondent] will be able to receive additional monthly rental income from that property as well. [Respondent's] own Exhibit #6 confirms that [petitioner's] monthly expenses, at a bare minimum, range from $1,400.00 to $3,000.00 per month for basic necessities. According to the Court's calculations, this maintenance award leaves [her] with a balance of approximately $1,600.00 per month ($5,100.00 minus $3,500.00 as reasonable expenses equals $1,600.00 per month compared to [his] having approximately $1,800.00 per month after assigning him a reasonable monthly expense as well as $3,500.00). This takes into consideration the contribution to expenses from his girlfriend or a reduction in his monthly expenses based on the fact that some of those expenses are incurred for her benefit.

Without the maintenance award of $3,000.00, [petitioner] would not be able to enjoy the standard of living that the parties had enjoyed during this twenty year period of their current marriage to each other. This maintenance award is temporary and will be reviewed by the Court in September of 2016 for purposes of determining [respondent's] decisions on retirement as well as

[petitioner's] attempts to increase her own financial situation."

¶ 62 The trial court directed Rathbun to draft a modified judgment of dissolution reflecting the modifications and clarifications set forth in the ruling.

¶ 63 G. The Judgment of Dissolution of Marriage

¶ 64 In its judgment of dissolution of marriage, entered on September 13, 2013, the trial court found:

> "5. [Petitioner's] current residence at 112 [West] Oak Lane in Decatur, Illinois, is non-marital property of [respondent], but the parties have agreed that said *** real estate should be awarded to [petitioner].
>
> * * *
>
> 7. [Respondent] has earned, almost entirely during the present marriage of the parties, a substantial separation benefit payable at such time as he may sever his business relationship with American Family Insurance; at the present time the prospective benefit is 96.4% marital property. This separation benefit at the present time amounts to $246,876, the marital portion being $237,988.46. Up until his age 60, [respondent] could receive the benefit in 60 equal monthly payments which, at the present time, would be $4,114.65 monthly. The actual benefit is subject to change, from the present time until [respondent's] 60th birthday, owing to factors entirely beyond [petitioner's] control; if [respondent] does not begin to receive payments until after his 60th

birthday, then the benefit would be annuitized and paid to [respondent] in equal monthly installments over the remainder of his lifetime. [Petitioner] is entitled to receive $118,994.23 in before-tax funds, the tax incidence to fall upon her, from [respondent's] eventual separation benefit."

¶ 65 The trial court awarded petitioner not only 112 West Oak Lane but also a portion of respondent's separation benefit. The judgment provides as follows:

"C. The Court hereby awards to [petitioner], free and clear of any right, title, interest, claim or demand on the part of [respondent], the residential real estate at 112 [West] Oak Lane in Decatur, Illinois. ***

D. The Court hereby awards to [petitioner], free and clear of any right, title, interest, claim or demand on the part of [respondent], the following marital assets or items of property or interests in property:

* * *

5. A portion of the American Family separation benefits, to which [respondent] presently is entitled. If [respondent] ceases doing business as an agent or representative of American Family Insurance, prior to reaching his 60th birthday, in which event the separation benefits would be payable to [respondent] in 60 equal monthly installments, [respondent] will be required hereby,

> to direct American Family Insurance to pay to [petitioner] 48.2% of the gross amount otherwise payable to [respondent] each month, for the period of 60 months. In that event, [petitioner] alone would be responsible for payment of income taxes attributable to the gross amount paid to her. If payment of such separation benefits to [respondent] does not begin prior to his 60th birthday, then [respondent] is required to notify American Family Insurance of [petitioner's] entitlement to 48.2% of all payments to which he would otherwise be entitled in the form of a monthly annuity, and he shall request that American Family Insurance pay that percentage of each monthly annuity payment directly to [petitioner], subject only to necessary income tax withholding. Any additional separation benefits shall be payable to [respondent]. If American Family Insurance refuses to make such annuity payments directly to [petitioner], then [respondent] shall be required to pay 48.2% of the gross annuity each month, to [petitioner] and such payments to [petitioner] shall be treated as maintenance paid by [respondent] to [petitioner]."

¶ 66 The trial court also awarded a rental property to petitioner, 4153 North Water Street. The court awarded to respondent the following real estate: 1712 Burning Tree Drive, 7

Fairview Place, 346 Melrose Court, 645 East Mound Road, and a lot at the corner of Ash Street and Illinois Route 51.

¶ 67 Finally, the trial court ordered respondent to pay maintenance to petitioner in the amount of $3,000 per month, beginning on the last day of June 2013 and continuing until further order. The court added that maintenance was to be reviewable on September 2016.

¶ 68 This appeal followed.

¶ 69 II. ANALYSIS

¶ 70 A. 112 West Oak Lane and the Separation Benefit

¶ 71 In its judgment of dissolution, the trial court found that 112 West Oak Lane was respondent's nonmarital property. Nevertheless, the court awarded 112 West Oak Lane to petitioner while also awarding her 48.2% of the separation benefit respondent eventually will collect from American Family Insurance.

¶ 72 Respondent points out that, under section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d) (West 2012)), a trial court must "assign each spouse's non-marital property to that spouse." He admits that, in his position statement, he "proposed that Petitioner get the residence at 112 [West] Oak Lane," which he characterized as his nonmarital property, but he also proposed a *quid pro quo*, namely, that he be credited with a transfer of $142,000 to her. During the trial, he "further explicitly clarified that the proposed transfer of the non-marital asset was to offset the separation benefit." In other words, he consented to the transfer of 112 West Oak Lane to petitioner—but only if, in return, he received 100% of the separation benefit. He argues the court "abused its discretion when it awarded Respondent's non-marital property to Petitioner without offsetting that by awarding Respondent 100% of his separation benefit."

¶ 73 It is true that, in the trial, respondent proposed the award of 112 West Oak Lane to petitioner in return for his retention of 100% of the separation benefit. He subsequently changed his position, however, when petitioner reminded him that in 2003 (actually in 2001) he quitclaimed to her all his interest in 112 West Oak Lane. On July 30, 2013, in the hearing on respondent's motion for reconsideration, Brinkhoetter admitted that, given the quitclaim deed, the existence of which he asked the trial court to "just assume" without the "pointless" formality of putting the document in the record, 112 West Oak Lane really was not respondent's nonmarital property but instead was petitioner's property, presumably a gift, and that consequently 112 West Oak Lane should go to petitioner and the marital portion of the separation benefit should be divided between the parties. Brinkhoetter suggested that dividing the separation benefit the way one divided a pension in a QDRO would "give[] [petitioner] her fair share." The court specifically asked the attorneys if they wanted the court to reclassify 112 West Oak Lane as marital property, considering that, by Brinkhoetter's admission, respondent had indeed quitclaimed it to petitioner. But see 750 ILCS 5/503(a)(1) (West 2012) ("property acquired by gift" is " 'non-marital property' "). Brinkhoetter at first said no, and then he said he did not care: the court could, in his words, "just leave it the way it [was] as far as [he was] concerned." In any event, he did not "really think [that 112 West Oak Lane] should play into this thing at all," and respondent "ha[d] designated this to be awarded to [petitioner]." As for Rathbun, he did not care how 112 West Oak Lane was classified, provided it went to his client.

¶ 74 Therefore, if the trial court erred by classifying 112 West Oak Lane as respondent's nonmarital property while simultaneously awarding 112 West Oak Lane to petitioner and also awarding her 48.2% of the separation benefit, it was invited error. "A party may not ask a court to proceed in a given manner and then assign as error on appeal the ruling

which he procured." *Miller v. Bloomberg*, 126 Ill. App. 3d 332, 336 (1984). Nor may a party complain of an error to which the party consented (*McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000)) or in which the party acquiesced (*Saxton v. Toole*, 240 Ill. App. 3d 204, 212 (1992)).

¶ 75 B. Maintenance

¶ 76 1. *Maintaining the Standard of Living to Which Petitioner Is Accustomed*

¶ 77 Quoting *In re Marriage of Magnusson*, 156 Ill. App. 3d 691, 698 (1987), respondent points out that the amount of maintenance must be "sufficient to provide the spouse seeking maintenance with the standard of living established during the marriage," with this important qualification: "where the spouse seeking maintenance can in part provide for [himself or] herself, the amount of the maintenance award shall be determined by subtracting from the standard of living that amount which the spouse can contribute to [his or] her own support."

¶ 78 Respondent reasons that, according to petitioner's financial affidavit and testimony, her "standard of living (other than the purchase of clothing) was maintained with $41,500 ($17,500 take home from her employment plus $24,000 support from Respondent)." During the pendency of the dissolution proceedings, respondent provided her approximately $24,000 a year in financial assistance. On cross-examination by Brinkhoetter, "[p]etitioner testified that she was not able to buy clothes the same way she could when the parties were together, but otherwise she could afford the same lifestyle between her own earnings and the support [in the amount of $24,000 a year] she was getting from Respondent." Considering the additional $5,000 a year petitioner would receive from the rental property the court awarded to her (4153 North Water Street), respondent argues the trial court abused its discretion by setting maintenance at $3,000 a month instead of the amount he had suggested, $2,000 a month.

¶ 79 As respondent says, we should reverse an award of maintenance only if the award

is an abuse of discretion or against the manifest weight of the evidence. See *Magnuson*, 156 Ill. App. 3d at 698. Thus, our standard of review is deferential. The award of maintenance is an abuse of discretion only if it is illogical, arbitrary, unreasonable, or contrary to law. See *Petryshyn v. Slotky*, 387 Ill. App. 3d 1112, 1116 (2008). The award is against the manifest weight of the evidence only if it has no basis in the evidence. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005).

¶ 80 We do not find $3,000 a month in maintenance to be illogical, arbitrary, or devoid of evidentiary support. On redirect examination by Rathbun, petitioner testified that her financial affidavit omitted some expenses, namely, clothing, gifts for the children, fuel, vehicle repairs, entertainment, and a new roof and other repairs for 112 West Oak Lane. It is not "clearly evident" that an additional $1,000 a month in maintenance is unnecessary to cover those omitted expenses and to preserve the standard of living to which petitioner was accustomed during the third marriage. *Kelly v. Orrico*, 2014 IL App (2d) 130002, ¶ 27. Granted, petitioner *could* receive as much as $5,000 in rent from 4153 North Water Street, but one cannot count on having a paying renter throughout the year. And besides, the entire $5,000 a year in rent would not necessarily be available for petitioner to spend on her own personal needs and desires. She would have to maintain a cushion: she would have to keep part of the rental proceeds in reserve to pay the real-estate taxes on the rental property and also to pay for repairs, in case the plumbing burst, for instance, or the furnace broke or the roof sprang a leak.

¶ 81 2. *Marital Misconduct*

¶ 82 Respondent claims the trial court's decision to award petitioner $3,000 a month in maintenance "was based on its belief that Respondent [was] spending too much money on his girlfriend." He observes that, under statutory law, a court must disregard any "marital

misconduct" when awarding maintenance. 750 ILCS 5/504(a) (West 2012).

¶ 83 The trial court never suggested, however, that respondent was committing any "marital misconduct." The only relevance of the court's reference to his girlfriend was that she appeared to have "inflated" his expenses, compared to petitioner's expenses. This was not a moral indictment so much as a comparison of one party's standard of living to that of the other party.

¶ 84 3. *Child Support for an Adult Son*

¶ 85 The trial court remarked that petitioner's "monthly expenses [were] for herself as well as for one of their adult children who [was] living with her." The court was referring to Craig Ekiss, who was 18. Respondent argues that "[t]his effectively makes the maintenance an improper award of adult child support." See *Clark v. Children's Memorial Hospital*, 2011 IL 108656, ¶ 33 ("The generally accepted common law rule is that parents have no obligation to support their adult children."). The point the court was making, though, was not that either of the parties had to support Craig Ekiss. Rather, the court's point was that, even with an unemployed adult residing with her, petitioner's expenses were substantially less than respondent's expenses and therefore respondent's expenses evidently were inflated. See 750 ILCS 5/504(a)(2) (West 2012) (when deciding on an amount of maintenance, the court should consider "the needs of each party").

¶ 86 III. CONCLUSION

¶ 87 For the foregoing reasons, we affirm the trial court's judgment.

¶ 88 Affirmed.