2017 IL App (4th) 160832-U

NO. 4-16-0832

FILED
October 31, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
KRISTEN MICHELLE GREEN-MORROW,	)	Circuit Court of
Petitioner-Appellee,	)	Logan County
and	)	No. 12D41
DAVID JOSEPH MORROW,	)	
Respondent-Appellant.	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment of dissolution of marriage is affirmed where the court did not err by (1) apportioning respondent's pension using the immediate offset method, (2) determining the value of petitioner's partnership interest, (3) denying respondent maintenance, and (4) denying respondent an award of attorney fees.

¶ 2 Respondent, David Morrow, appeals the trial court's judgment of dissolution of marriage, challenging the court's distribution of marital assets and liabilities and the denial of spousal maintenance and an award of attorney fees. Particularly, respondent claims the court erred by (1) applying a present cash value based on a retirement age of 60 to respondent's pension; (2) failing to include the full value of petitioner's partnership interest; (3) denying respondent maintenance after determining that, although maintenance would be appropriate, the amount was offset by the amount of his potential child-support obligation; and (4) denying respondent an award of attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and petitioner, Kristen Green-Morrow, married in March 2001. At the time, petitioner was in her final year of residency as a physician specializing in obstetrics and gynecology. Respondent was employed by the State of Illinois as a mainframe programmer in Springfield. They had a son, D.J.M., in 2004 and a daughter, K.E.M., in 2006. After completing her residency, petitioner began practicing with Springfield Clinic in Lincoln and eventually became a partner.

¶ 5 In March 2012, petitioner filed a petition for the dissolution of marriage. The trial court granted a dissolution in March 2013, reserving judgment on all other related matters. The parties submitted an agreement as to child custody and visitation. The only issues before us in this appeal relate to matters of equitable distribution, spousal maintenance, and attorney fees.

¶ 6 In November 2015, the trial court conducted a trial on all unresolved issues. At that time, petitioner was 44 years old and respondent was 55 years old. Petitioner testified she had been a physician, specializing in obstetrics and gynecology, for 14 years, graduating residency in 2001. She had three months of residency left when she and respondent married. Pursuant to her partnership agreement with Springfield Clinic, her income changes every six months in February and August each year. At the time of the trial, petitioner's salary, beginning in August 2015, was $26,099 per month. She was also receiving $500 per month from respondent in child support and $60 per month as a member of the Logan County Paramedics Board. She donated her time to Lincoln Christian University as a teacher of anatomy and physiology.

¶ 7 Petitioner testified, as a partner, she was required to make contributions into Springfield Clinic's retirement system. She also said she and another couple constructed a

residence on a plot of land in Wisconsin that she received from Lincoln Christian University as a gift. She said respondent held no interest in the land or liability on the mortgage of the home, as this was purchased after the entry of the order of dissolution. She said respondent does not contribute to any other expenses toward the household or the children outside of his $500 per month temporary child support amount. Petitioner has asked for contribution for the children's uncovered medical expenses, but respondent has refused. Both children have ADHD and both are on medication.

¶ 8 Petitioner said respondent provided health insurance for the children through his employment with the State. She said she and the children live in the marital home in Lincoln, which had been appraised at $105,000. Each party had their own vehicles in their possession.

¶ 9 Respondent testified as an adverse witness. He said he was employed with the Illinois Department of Natural Resources. He was then living in his mother's house in Lincoln without paying rent. According to his 2014 tax return, respondent had taxable income of $99,500. He said he had two bank accounts and substantial credit card debt. Respondent said after the children were born, he "became sort of the mom." He said he did all of the household chores. He fed the children, took them to the babysitter, did the grocery shopping, did the laundry, and put the children to bed. He said he "was the babysitter when [he] wasn't at work."

¶ 10 After considering the evidence and written arguments of counsel, the trial court entered a written order settling the pending issues. The court found respondent's child support obligation would equal $1500 per month. However, due to the "respective incomes of the parties [and] the unique circumstances of this case," the court did not order respondent to pay child support. Regarding maintenance, the court found both parties made "substantial incomes" and

both were "able to maintain the lifestyle to which they became accustom[ed] during the marriage." The court stated:

> "[M]aintenance would be appropriate in this cause for a period of six years and if this court were to order maintenance, it would be set at $2[,]000[] per month as requested in respondent's argument. However, child support is also appropriate in this case and would be ordered in the amount of $1,500 per month as previously indicated in this order. Considering the offsetting nature of these payments in addition to the other child-related expenses assigned to the petitioner, the duration of any award of maintenance as opposed to child support in this case and the tax ramifications to the parties, maintenance is denied."

¶ 11 Regarding property division, the trial court adopted the division and values set forth by petitioner in her written proposal. That is, the court awarded respondent assets in the amount of $516,735, and petitioner assets in the amount of $577,524. The court ordered each party to pay his or her own attorney fees. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Respondent's Pension

¶ 14 Respondent first contends the trial court erred by using the immediate offset method in awarding him the present value of his pension from the State. He claims using the present value assumes he will retire at age 60, which, he says, was contrary to the evidence. We affirm.

¶ 15 Both parties agree our standard of review of a trial court's valuation of property in a dissolution of marriage is a manifest-weight-of-the-evidence standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). However, the distribution of marital property is a

matter within the trial court's discretion. *Hubbs*, 363 Ill. App. 3d at 700. This discretion includes the court's choice of the method used to apportion retirement benefits. *In re Marriage of Korper*, 131 Ill. App. 3d 753, 757 (1985). The two most common methods of apportioning pension benefits are the reserved jurisdiction method and the immediate present value offset method. *In re Marriage of Britton*, 141 Ill. App. 3d 588, 591 (1986). As noted previously, the reserved jurisdiction method allows a trial court to award each party a percentage of the marital portion of a pension and to reserve jurisdiction to enforce that award when the pension benefits are received. *Britton*, 141 Ill. App. 3d at 591. Under the immediate offset method, the court determines the present value of the expected future pension benefits, awards the party his or her own pension, and awards the other party other marital property to offset the value of the pension. *Britton*, 141 Ill. App. 3d at 591. In this case, the court used the immediate offset method, and we will not reverse that decision absent an abuse of discretion. A trial court abuses its discretion only when "no reasonable person would take the view adopted by the trial court." *Korper*, 131 Ill. App. 3d at 757.

¶ 16 Respondent claims the trial court erred in using the present value because that present value assumed respondent would retire at age 60, which, he claims, was contrary to the evidence presented at trial. With regard to this subject, the following exchange occurred:

"Q. [Petitioner's attorney:] You are eligible to retire because of the rule of 85 right now, correct?

A. That's correct.

Q. But the normal retirement age is 60; isn't that correct?

A. If you have less than 32 years with the service, yes.

Q. But that's—if you didn't have the rule of 85, then it would be age 60?

A. Age 60, with eight years of work. Yes.

Q. And you qualify for that?

A. I have 34 years.

Q. How old are you now?

A. 55."

Respondent's counsel continued the questioning about retirement with the following exchange:

"Q. [Respondent's attorney:] When Mr. Scott [petitioner's attorney] was asking you about retirement age, the State of Illinois would—the normal retirement age is 60; is that correct?

A. Normal retirement age is 60 with 8 years.

Q. And at that time, you would receive your retirement payment, your pension payment?

A. If I retired, yes.

Q. But unless you had additional employment, that would be it for you to live on; is that accurate?

A. That's correct.

Q. And by the way, you said you're 55. What is your health?

A. I'm a—I have had two open-heart surgeries. I had one heart attack. And I'm diabetic. Other than that, my health is good.

Q. You're able to go to work now?

A. I'm able to go to work, I'm able to lift heavy boxes.

* * *

Q. And is it your intention to keep—continue working?

A. I don't think I have an option. I have to continue to work. I don't have the income to support any lifestyle let alone what I would—

Q. If you retired?

A. If I retired, no. I couldn't live on that money."

¶ 17 The evidence did not suggest respondent would retire at age 60 even though he (1) acknowledged that was the normal and customary age for retirement for State employees and (2) was eligible to receive his pension at that time. However, he clearly indicated he had no intention of retiring in four or five years.

¶ 18 Our supreme court has stated: "[I]f the payment of benefits is contingent upon future events, such as the continuation of employment, a present award based on the discounted value of future payments to the employed spouse will prove excessive if the amount of benefits which he actually receives is less than the amount which was assumed." *In re Marriage of Evans*, 85 Ill. 2d 523, 528 (1981). That is, the immediate offset method is "best only where the pensioner is close to mandatory retirement age or retirement is otherwise imminent, and there are sufficient other marital assets to allow an offset to the nonpensioner spouse." *In re Marriage of Wisniewski*, 107 Ill. App. 3d 711, 717 (1982). Otherwise, the trial court may postpone a decision on the ultimate method of apportionment until the benefit is known, especially if the monthly pension benefits will be dependent upon the number of years of employment at retirement. *Wisniewski*, 107 Ill. App. 3d at 717.

¶ 19 The trial court, applying the immediate offset method, valued respondent's pension at the retirement age of 60 at $677,637. The marital portion of 39.39%, equaling $269,564, was awarded solely to respondent. Although the evidence at trial suggested respondent

was not intending to retire within the next few years, the court did not abuse its discretion in applying the immediate offset method because the court awarded respondent other assets including half of petitioner's 401(k). See *Wisniewski*, 107 Ill. App. 3d at 717 (the immediate offset method is appropriate where there are sufficient marital assets to allow an offset).

¶ 20 In arguing the trial court's valuation was in error, respondent provides alternative valuations and means of distribution for respondent's pension benefits. However, given our deferential standard of review, we determine only whether any "reasonable person would take the view adopted by the trial court." See *Korper*, 131 Ill. App. 3d at 757. We have before stated the trial court "has broad discretion" regarding apportionment. See *In re Marriage of Wiley*, 199 Ill. App. 3d 169, 177 (1990).

¶ 21 Respondent has not convinced us the trial court abused its discretion regarding the distribution or apportionment. On this record, it appears the court carefully considered all of the evidence and made a reasoned and informed decision regarding the distribution of marital property. Given the value of the marital assets, the age and health of the respective parties, the court's interest in reaching finality, and all other relevant circumstances present in this case with regard to the court's distribution of assets and debt, we cannot say the trial court abused its discretion in applying the immediate offset method.

¶ 22 B. Value of Petitioner's Partnership Interest

¶ 23 Respondent also claims the trial court erred in valuing petitioner's partnership interest. On March 4, 2013, the same day as the entry of the judgment of dissolution of marriage, Springfield Clinic sold its electronic record-keeping system, resulting in an increase in the partner's share value of the Clinic. Respondent claims the court erred by not including the full

value of petitioner's interest in the Clinic after the sale. Our review of the court's valuation of property is a manifest-weight-of-the-evidence standard. *Hubbs*, 363 Ill. App. 3d at 700.

¶ 24 The value of petitioner's partnership interest as of January 1, 2013, was $147,125.50. Petitioner's capital gain from the sale of the record-keeping system was $25,560. As a result, petitioner's partnership agreement was amended to provide that each partner would receive a distribution to cover the tax liability resulting from the gain. Each partner's equity would be increased by $4,589.25 annually each year beginning in January 2014 and continuing through January 2018, for a total impact over five years of $22,946.25. However, in order to receive the benefit, the partner would have to remain a partner for those five years.

¶ 25 The date of valuation for a marital asset is the date of entry of the judgment. *In re Marriage of Mathis*, 2012 IL 113496, ¶ 30. The finalized sale of the system and the final judgment of dissolution were entered the same day, on March 4, 2013. The parties entered into a stipulation on November 3, 2015, which set forth the following:

> "Pursuant to the terms of the partnership agreement, the Clinic accountants calculate the value of the partners' equity interest at the end of each calendar year. The Clinic calculated the equity value of a unit as of December 31, 2012, to be $5,885.02, for a total value of petitioner's 25 units of $147,125.50."

¶ 26 Despite the stipulation as to the value as of December 31, 2012, the trial court gave respondent the benefit of the doubt as to whether the sale of the system could be considered a marital asset since the sale was finalized the same day as the entry of the dissolution judgment. Without litigating the issue and by using a "compromise figure" as proposed by petitioner, the trial court valued the partnership interest at $156,304, an increase of $9,178.50 over the stated and stipulated value. Applying this "compromise figure" as an increase in the value of the

partnership, rather than applying the full increase of value, it is apparent the trial court found the benefit of the sale of the system did not actually accrue during the marriage or that neither party wished to litigate the issue. Although the court provided no definitive answer on how it arrived at the increased value, it nevertheless awarded respondent the additional amount beyond the stipulated value. We reasonably assume the court adopted petitioner's claim that the sale of the system increased the value of her partnership by the amount she would receive in a buyout after two years of equity payments, or $9,178.50. We find this calculation was not against the manifest weight of the evidence.

¶ 27 Respondent does not present this court with convincing authority to otherwise find that the trial court's valuation should exceed the value to which respondent previously stipulated. His claim that petitioner's partnership value increased by the amount of the capital gain, for a total of $25,560, as the amount realized, is without merit. This total gain was not vested, and petitioner's receipt of which was speculative as it was attached to the condition that she remain a partner until 2018. Given these circumstances, we find no basis upon which to disturb the court's finding or increase the value to which respondent had previously stipulated.

¶ 28 C. Maintenance

¶ 29 Respondent also contends the trial court erred in failing to award him maintenance, and instead, offset the amount he would have been awarded by the amount he would be required to pay in child support. The court found respondent would have been entitled to $2,000 per month in spousal maintenance for six years. The court also found respondent would have been required to pay $1,500 per month in child support. In its final judgment, the court offset the amounts and ordered the payment of neither amount.

¶ 30 We review a trial court's award of maintenance or child support under an abuse-of-discretion standard. *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). As of the date of trial, petitioner earned approximately $300,000 per year as a physician. Respondent earned approximately $95,000 per year as a State employee. Each party submitted a calculation of income and child support. According to respondent, petitioner's net income was $12,676/month and respondent's was $6,720/month. Respondent contends without maintenance, he will have to "live a lifestyle significantly lower than that of the marriage."

¶ 31 Respondent does not present a sufficient argument to justify disturbing the trial court's judgment with respect to the maintenance and child support offset. The court's calculation of potential maintenance in the amount of $2,000 per month was supported by the evidence given the parties' disparity of incomes. Further, the court's calculation of potential child support in the amount of $1,500 per month was also supported by the evidence. Thus, it was not an abuse of discretion to consider the amounts offset.

¶ 32 The trial court's decision was reasonably based upon the documentary evidence presented, the testimony of witnesses, and the respective arguments of counsel. The evidence demonstrated that (1) petitioner's salary varied every six months (*i.e.*, from $26,000/month to $15,000/month in a six-month period), (2) she has substantial expenses related to the children's care, (3) her monthly income does not always meet her monthly expenses, (4) respondent was living in cost-free housing, (5) he had sufficient income to support his lifestyle, (6) he had the means to contribute to his deferred compensation, and (7) he had the option to sell assets. Based on the particular circumstances of this case and the application of statutory factors (see 750 ILCS 5/504 (West 2014)), we find the court's decision regarding the propriety of a maintenance award was not an abuse of discretion. See *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 3. We

further conclude the court's factual findings supporting that decision were not against the manifest weight of the evidence. See *Sturm*, 2012 IL App (4th) 110559, ¶ 3.

¶ 33 D. Attorney Fees

¶ 34 Finally, respondent contends the trial court erred in denying him an award of attorney fees. We review a trial court's decision to award or deny fees under an abuse-of-discretion standard. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005).

¶ 35 Section 503(j) states, in pertinent part, as follows:

> "After proofs have closed in the final hearing on all other issues between the parties ***, a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided, in accordance with the following provisions:
>
> ***
>
> (2) Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this [s]ection 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under [s]ection 504." 750 ILCS 5/503(j)(2) (West 2014).

¶ 36 Respondent filed a petition for contribution pursuant to section 503(j) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(j) (West 2014)), claiming (1) petitioner was in a "superior financial position," while respondent had an "inability to pay his fees without jeopardizing his financial stability"; (2) several statutory factors supported his position (750 ILCS 5/503(d)(1), (3), (4), (5), (8), (11), (12) (West 2014)); (3) he incurred fees from pursuing discovery compliance from petitioner; and (4) he incurred fees from petitioner's

filing of a petition for a restraining order. Respondent owed his counsel $27,952.51 in outstanding fees and costs after the trial. He had already paid $69,505.89.

¶ 37 The trial court's decision whether to award attorney fees is discretionary. A reviewing court will disturb a discretionary finding only if the court acts "arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Haken*, 394 Ill. App. 3d 155, 160 (2009).

¶ 38 Here, the trial court ordered each party to pay his or her own attorney fees. Respondent contends that decision was in error given the fact the court had decided that an award of maintenance would be appropriate in this case. Indeed, subsection 503(j) (750 ILCS 5/503(j) (West 2014)) instructs the court to consider the criteria for an award of maintenance under section 504 (750 ILCS 5/504(a)(1-12) (West 2014)) when deciding whether attorney fees contribution is appropriate. As stated above, the court offset respondent's potential award of maintenance by the amount he would have been required to pay in child support. As a result, the court ultimately did not award maintenance.

¶ 39 In determining whether to order contribution, the trial courts must consider the financial resources of the parties. Here, it was reasonable for the court to consider the equitable distribution of the marital assets, respondent's individual earning capacity, and the fact he was not ordered to pay child support. See *Schneider*, 214 Ill. 2d at 174-75. Our supreme court recently addressed whether the inability to pay remained a consideration in an attorney-fees award. The court held a party's inability to pay remains a factor, but this factor was "never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance. [Citations.] Rather, a party is unable to pay if, after consideration of all the

relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *In re Marriage of Heroy*, 2017 IL 120205, ¶ 19.

¶ 40 Considering the statutory factors, the court's distribution of assets, and respondent's financial affidavit, we cannot say the trial court abused its discretion in ordering each party responsible for his or her own attorney fees. Respondent budgeted $2,500 per month for attorney fees and has sufficient income to support this amount. He has not sufficiently demonstrated that the payment of his fees would undermine his financial stability. Therefore, we find no reason to disturb the court's order.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.