2012 IL App (5th) 110356-U

NO. 5-11-0356

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

VIRGINIA S. GRIGGS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	St. Clair County.
	)	
v.	)	No. 75-D-7286
	)	
LEONARD L. GRIGGS,	)	Honorable
	)	Randall W. Kelley,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Donovan and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial judge did not err in denying the petitioner's request for modification of maintenance, petition to show cause, and request for attorney fees in a case in which more than 35 years had passed since the parties' divorce became final.

¶ 2 The petitioner, Virginia S. Griggs, appeals the order of the circuit court of St. Clair County that denied her petition to modify maintenance, petition to show cause, and request for attorney fees. The petition was directed against the respondent, Leonard L. Griggs, who is the former husband of the petitioner. For the following reasons, we affirm the trial court's order.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal are as follows. Virginia and Leonard were married in 1955. They divorced in 1975. The parties agreed in their divorce decree that Leonard would pay Virginia maintenance in the amount of $650 per month, and would "pay the premium for and keep in full force and effect all the insurance contracts and

policies" on his life that were in existence at the time of the divorce, keeping Virginia as the primary beneficiary thereof. No expiration date was given with regard to the payment of maintenance. At a hearing on July 27, 2011, the parties agreed that because of their advanced age and hearing problems (Leonard was 79 at the time of the hearing; Virginia 76), party counsel would summarize the parties' testimony and present argument rather than having the parties testify directly. With regard to the insurance policies, counsel for Virginia stated that shortly after the divorce, Virginia received a handwritten, unsigned letter from Leonard that counsel claimed showed the value of each life insurance policy he had at that time. The letter was admitted into evidence as Exhibit 1 and shows four monetary amounts, each with a company name beside it: $60,000 from AMSA, $30,000 from Academy Life, $20,000 from NSLI, and $20,000 from the Air Force Association. The letter indicates that the policies total $130,000 in coverage. Counsel for Virginia pointed out that because the letter states that the Academy Life and Air Force Association policies provide double indemnity if Leonard dies in an accident, the total coverage in that circumstance would be $180,000.

¶ 5 Counsel for Virginia subsequently read into the record excerpts from the March 10, 2011, deposition of Leonard, in which Leonard agreed that Exhibit 1 was in his handwriting, but also stated that he did not recall writing the letter, or when it was written, and that he did not recall telling Virginia which life insurance policies he had in place at the time of the divorce, but that he thought she knew. Counsel for Leonard stated that Leonard's testimony would be that he never had policies totaling $180,000, and that he never willfully terminated any policies. The divorce decree does not list the names of any life insurance policies, nor does it reference any amounts of coverage. A second letter, this one signed by Leonard, was written approximately one year later and was also admitted into evidence. In it, Leonard states that he will abide by the terms of the decree with regard to life insurance.

¶ 6 With regard to changed circumstances that might justify a modification of maintenance, details of Virginia's life since the divorce were admitted into evidence, such as her work history, which was spotty and was comprised completely of low-paying food service jobs, her multiple health problems, her present income and expenses, and the fact that her daughter helps her financially so that Virginia can meet her basic needs. Details of Leonard's postdivorce life were also admitted, including his work history, present and past health issues, and his substantial present income and expenses. Counsel for Leonard pointed out that Leonard has now been paying maintenance to Virginia for 36 years, which is almost twice as long as the parties were married. Counsel also noted that although Virginia received a significant settlement under the terms of the divorce decree, and although the maintenance was to be used to help Virginia improve her education and job prospects, Virginia did not use the maintenance to do so, choosing instead to remain in the food service industry. Counsel noted too that after the divorce, Leonard continued to care for, and provide financially for, the parties' children, with Virginia leaving the state and maintaining no responsibilities for the children and not contributing at all to their education, weddings, or other expenses. Finally, counsel noted that although Virginia's serious health issues purportedly began in 1997, she did not request a modification of maintenance until 2010. Counsel for Virginia, on the other hand, pointed out that Leonard currently spends more per month on recreation, club dues, and a trainer than Virginia's entire monthly income.

¶ 7 Following the hearing, the trial judge denied Virginia's petition to modify maintenance, petition to show cause, and request for attorney fees, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 8 ANALYSIS

¶ 9 On appeal, Virginia contends the trial court erred by: (1) denying her request for

modification of maintenance on the basis of a substantial change in circumstances; (2) finding that no credible evidence supported her theory about which life insurance policies were in effect at the time of the divorce, and therefore denying her request for a rule to show cause why Leonard should not be held in contempt; (3) declining to order Leonard to purchase additional life insurance; and (4) denying her request for attorney fees. We shall address each of these contentions in turn.

¶ 10 Virginia first claims the trial judge's denial of her request for modification of maintenance was against the manifest weight of the evidence. We will not disturb a trial court's decision, following a review of maintenance, to modify, or decline to modify, maintenance unless we conclude that decision reflects "a clear abuse of discretion." *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Id*. (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 11 In the case at bar, Virginia posits that because the evidence established that she is in poor health, lives in poverty, has not earned nearly as much money as Leonard has, and has experienced a dramatic drop in her standard of living since the divorce, her request should have been granted. She points out as well that the record shows that Leonard has a substantial income, including a military pension to which Virginia was entitled to no amount at the time of the divorce, and therefore can afford to pay her more maintenance. She also contends the judge's decision is "unreasonable" because the $650 per month she receives in maintenance is worth substantially less now than it was when she began to receive it in 1975. We do not agree. Although Virginia accurately recites some of the evidence before the trial judge, she neglects evidence of Leonard's current and past health problems, as well as evidence that Leonard has now been paying maintenance to Virginia for 36 years, which is almost twice as long as the parties were married. Moreover, the evidence before the trial

judge revealed that although Virginia received a significant settlement under the terms of the divorce decree, and although the maintenance was to be used to help Virginia improve her education and job prospects, Virginia did not use the maintenance to do so, choosing instead to remain in the food service industry. The evidence also revealed that after the divorce, Leonard continued to care for, and provide financially for, the parties' children, with Virginia leaving the state and maintaining no responsibilities for the children and not contributing at all to their education, weddings, or other expenses. Finally, the trial judge was aware that although Virginia's serious health issues purportedly began in 1997, she did not request a modification of maintenance until 2010. Given the totality of the evidence before the trial judge, we cannot agree with Virginia that the judge's decision to deny her request for modification of maintenance was unreasonable, nor can we conclude it otherwise constituted an abuse of discretion.

¶ 12 Virginia next contends the trial judge erred by finding that no credible evidence supported Virginia's theory about which life insurance policies were in effect at the time of the divorce, and therefore denying her request for a rule to show cause why Leonard should not be held in contempt of court for "willfully and wantonly" terminating the policies or "otherwise fail[ing] to replace" them. Virginia's theory is that Exhibit 1 accurately reflects the policies in effect at that time, and she argues that the trial judge's finding is based upon "a complete absence of probative facts." Although it is true, as Virginia contends, that Leonard admitted in his deposition that Exhibit 1 is in his handwriting, the additional evidence presented was that he did not recall writing the letter, or when it was written, and that he did not recall telling Virginia which life insurance policies he had in place at the time of the divorce, but that he thought she knew. Counsel for Leonard stated that Leonard's testimony would be that he never had policies totaling $180,000, and that he never willfully terminated any policies. Moreover, the divorce decree does not list the names of any life

insurance policies, nor does it reference any amounts of coverage. The trial judge had before him conflicting evidence about the total amount of coverage at the time of the divorce, and no evidence was presented that Leonard ever willfully or wantonly terminated any coverage. To the contrary, the only evidence on termination was that some of Leonard's policies have decreased and/or expired on their own terms with the passage of time. We cannot conclude the trial judge erred by deciding not to hold Leonard in contempt of court.

¶ 13 The third issue raised by Virginia is that the trial judge erred by declining to order Leonard to purchase additional life insurance to bring his total coverage up to $180,000. Because we conclude that the judge did not err in finding that there was insufficient evidence to conclude the insurance policies totaled $180,000 at the time of the divorce, we also conclude that he did not err in declining to force Leonard to purchase additional insurance now. As Leonard's counsel points out, it is questionable whether someone of Leonard's advanced age, with his health problems, could even purchase such insurance, and there is no basis in the record for requiring him to do so.

¶ 14 Virginia's final contention is that the trial judge erred by denying her request for attorney fees. In postdivorce decree proceedings, the allowance of attorney fees is committed to the sound discretion of the trial court. *Brandt v. Brandt*, 99 Ill. App. 3d 1089, 1110 (1981). Accordingly, we will disturb a trial judge's decision regarding said fees only "where it appears that the exercise of that discretion is clearly abused." *Id*. In the case at bar, as counsel for Leonard points out, no documentary evidence was presented in support of the request for $8,300 in attorney fees, such as billing statements, itemizations, etc. Moreover, as explained above, although Virginia raised numerous issues in her petition, none of them were resolved in her favor, and Leonard has incurred substantial attorney fees of his own in defending against Virginia's petition. Accordingly, we find no error.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we affirm the order of the circuit court of St. Clair County.

¶ 17 Affirmed.