2014 IL App (5th) 130264-U

NO. 5-13-0264

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
SANDRA L. JONES,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-24
	)	
STEPHEN C. JONES,	)	Honorable
	)	Dean E. Sweet,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in finding dissipation of assets, nor in awarding maintenance and child support.

¶ 2 Respondent, Stephen C. Jones, appeals from the judgment of dissolution of marriage issued by the circuit court of Madison County on January 16, 2013, as well as the order disposing of his posttrial motion issued May 7, 2013. We affirm.

¶ 3 Stephen and Sandra L. Jones were married in April of 1990. Three children, now ages 19, 12, and 10, were born to the marriage. Also during the course of the marriage, Stephen earned a law degree. He subsequently took postgraduate courses but did not

finish earning any other degree. In April of 2009, after working for several different law firms, Stephen started his own firm specializing in elder law. A former associate from the last firm he worked with joined his firm and became his equal partner. Stephen subsequently began living with his law partner as well.

¶ 4 During the majority of the parties' marriage, Sandra stayed at home raising the parties' children. In 1998, Sandra began working in a doctor's office as a medical assistant. She still works for the doctor part-time, earning $2,325 per month. Stephen's income, on the other hand, grew substantially while working for the last firm he was associated with before starting his own firm. His income from his own firm is reportedly less, but his accounts also show substantial outlays for expenses associated with starting the firm, including a vehicle and significant advertising. The court specifically noted that Stephen and his new partner made long-term decisions affecting short-term income, what the court termed a "voluntary reduction in current income," as exemplified by the firm's $40,000 purchase of Cardinals baseball tickets. The court ultimately found husband's net income to be $100,000 per year.

¶ 5 Some four months after Sandra filed for dissolution of the parties' marriage, Stephen withdrew monies from his life insurance IRA to pay expenses and prepay his student loans. During the year 2011, he paid almost $18,000 toward those loans. He also sold the parties' camper and boat as well as his vehicle and traded down to a less expensive car.

¶ 6 During the course of the proceedings, the parties entered into a joint parenting agreement awarding the parties joint legal custody of the minor children with Sandra as

the primary physical custodian. All other issues were reserved for trial. In the final order entered after trial, the court ordered Stephen to pay $2,333 a month in child support and to pay for and maintain health insurance for the benefit of the children. Any uninsured expenses were to be shared with Stephen paying 60% and Sandra 40%. Stephen was also ordered to pay 60% of the children's school tuition, as well as school and extracurricular activity fees and expenses. The court further awarded Sandra permanent maintenance in the amount of $2,100 per month, recognizing that Stephen's ability and potential to earn income far exceeded that of Sandra. The profit from selling the parties' former marital home was divided equally, and each party was awarded their respective vehicles. The court also concluded that Stephen expended marital funds for his personal benefit without Sandra's consent. The court therefore awarded Sandra $9,000 as her share of Stephen's prepayment of his student loans plus $15,000 as her share of his life insurance withdrawal after the dissolution proceeding had been filed. Each was awarded all bank accounts in their individual names as well as life insurance policies. Sandra was also awarded 60% of the parties' retirement accounts. Finally, Sandra was awarded a $45,000 lump sum distribution to "offset the value of all other assets and marital interests including those of Stephen's [c]orporations." The parties' joint income tax refunds for 2011 were divided equally, and Stephen initially was ordered to pay $5,000 of Sandra's attorney fees. With the posttrial order, Sandra's permanent maintenance was changed to rehabilitative maintenance, expiring January 31, 2017, unless Sandra petitioned for an extension and showed a continuing need. Additionally, each party was now ordered to pay their own attorney fees and litigation expenses. The court concluded by again noting

the length of the parties' marriage, the present incomes of the parties, and the standard of living of the parties during the marriage.

¶ 7 On appeal, Stephen takes issue with the court's finding of dissipation of assets on his part, the award of a lump sum distribution to Sandra offsetting his "corporation interests," the award of maintenance, and the amount of child support awarded. With respect to the issue of child support, Stephen points out that he is also paying 60% of the expenditures made on behalf of the children, and further contends his student loan payments should be deducted from his income for purposes of child support calculations.

¶ 8 Turning first to the issue of dissipation of assets, we note that dissipation generally is considered to be the use of marital property for the sole benefit of one spouse, for a purpose unrelated to the marriage, at a time the marriage is undergoing an irreconcilable breakdown. *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497, 563 N.E.2d 494, 498-99 (1990). We review factual findings on the issue of dissipation under the manifest weight of the evidence standard, but review the final property distribution under the abuse of discretion standard. *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 779, 881 N.E.2d 396, 413 (2007).

¶ 9 Stephen argues there was no dissipation of marital assets. He also points out that the court awarded 50% of the gross amount withdrawn from his insurance funds and ignored the 10% penalty and taxes withheld from those same funds. More importantly, Stephen asserts that the monies were used to pay the parties' mortgages and other household expenses. He further argues that because his student loans were incurred

during the marriage, any prepayment of the loans did not constitute dissipation. Sandra counters that the student loans did not stem from Stephen's law school degree, a degree which was utilized to provide for the family, but instead arose from his failed attempt to obtain another master's degree which did not benefit them. She further points out that Stephen withdrew some $31,000 from the insurance IRA to allegedly pay bills, but two days after the withdrawal, he paid $25,000 cash for a new vehicle for his law firm. Given that the trial court is in a superior position to determine credibility (see *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 95), it is also reasonable for the court to disbelieve Stephen's explanation of how the funds were used. Moreover, as Sandra points out, neither the purchase of the vehicle for Stephen's law firm nor the prepayment of his student loans benefitted her or the children. Both, however, reduced marital funds and affected the ultimate financial resolution of the parties' marriage in the amount of debt for which Stephen was responsible. Moreover, the gross amount of what was received from the insurance IRA funds is what the marriage lost, not the net received by Stephen for the early withdrawal. Under the circumstances presented, we cannot say the court's findings of dissipation were in error.

¶ 10 Stephen next takes issue with the court's award of a lump sum distribution of $45,000 to Sandra to "offset the value of other amounts, assets and marital interests, including Stephen's [c]orporations." He believes that because the court gave Sandra 60% of the retirement accounts, and awarded the parties their respective life insurance policies and divided the income tax refund equally, there was nothing left to offset. The only marital assets left were Stephen's interest in his law firm and a small interest in an

investment corporation. He further points out that the court never established any value for his interest in the law firm, in addition to the fact that the firm's liabilities exceed its assets. Moreover, it is only his goodwill which determines his ability to earn future income. Stephen therefore contends that the court's failure to recognize goodwill of Stephen in his law practice, which is his ability to earn in the future, while awarding an unequal division of assets and allocation of expenses, and the award of maintenance constitutes "double-dipping." See *In re Marriage of Talty*, 166 Ill. 2d 232, 237, 652 N.E.2d 330, 333 (1995).

¶ 11 As Sandra correctly points out, the Illinois Marriage and Dissolution of Marriage Act requires the court to divide the parties' assets in "just proportions" (750 ILCS 5/503(d) (West 2010)), and "just" does not necessarily mean equal (*In re Marriage of Sevon*, 117 Ill. App. 3d 313, 318, 453 N.E.2d 866, 869 (1983)). The court specifically stated in its order that "in making the division of the property and assets of the parties," the court considered "the totality of the financial circumstances of each of the parties." The court further noted that "[i]n granting any one specific award or denial of an award herein, the Court has considered the entirety of the evidence and financial impact as it affects each party, rather than to view the matter as a series of individual rulings." Moreover, contrary to Stephen's assertions, the court was not required to find a specific value for Stephen's firm in determining the value of the property to be distributed. There is sufficient evidence otherwise in the record to allow review of the distributions. See *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 638, 686 N.E.2d 670, 673 (1997). We also do not see any evidence of the court double counting Stephen's future ability to earn.

In other words, the record does not show that the court counted the goodwill of Stephen's law firm as an asset in addition to considering his greater ability to earn. See *In re Marriage of Talty*, 166 Ill. 2d at 237, 652 N.E.2d at 333. Accordingly, we find no abuse of the court's discretion in awarding Sandra a lump sum distribution under the circumstances presented.

¶ 12 We also find no abuse of the court's discretion with respect to the awards of child support and maintenance. In fashioning these awards, the court determined Stephen's annual net income to be approximately $100,000. Stephen contends his annual net income is only $65,000, and that his 2010 personal income as well as that of the law firm was inflated by a fee received from a referred mesothelioma case. He further argues, relying on *In re Marriage of Davis*, 287 Ill. App. 3d 846, 854, 679 N.E.2d 110, 116 (1997), that his student loan obligations constitute reasonable and necessary expenses for the production of income, and are deductible to determine his actual net income. According to Stephen, the expenses of his schooling were made in the good-faith belief that his income would increase as a result. He further asserts that such expenses were not overwhelming or excessive. Finally, he believes that the court's award is "onerous" in that both child support and maintenance were awarded retroactively and were not offset by the temporary child support or one-half mortgage payments made between the trial date and the issuance of the court's order, some nine months later.

¶ 13 We initially note that the court's findings as to net income and the award of child support and maintenance are within the discretion of the trial court and will not be disturbed on review absent an abuse of that discretion. *In re Marriage of Freesen*, 275

Ill. App. 3d 97, 103, 655 N.E.2d 1144, 1148 (1995). Moreover, in determining the net income of a self-employed parent, the court should start with that parent's gross income from all sources, not the claimed income after all allowable tax deductions. See *In re Marriage of Carpel,* 232 Ill. App. 3d 806, 819, 597 N.E.2d 847, 857 (1992). The court is also authorized to consider earnings from prior years in determining the self-employed parent's net income. *In re Marriage of Freesen*, 275 Ill. App. 3d at 103-04, 655 N.E.2d at 1148-49.

¶ 14 Here, it is reasonable to expect that Stephen's new law firm would have larger startup costs, but it is also reasonable to assume that such costs are unlikely to reoccur. Many of the expenses incurred, however, were also ones that could have, at a minimum, been postponed, such as $40,000 for baseball tickets, $9,000 for a month of television commercials, $25,000 for a new vehicle, and $114,000 in overall advertising expenses. Clearly Stephen could have foregone some of these business expenses in order to meet his obligations. As the court noted, Stephen made several long-term decisions affecting short-term income in a voluntary effort to reduce current income. We therefore agree with Sandra that the level of child support and maintenance set by the trial court is not onerous when compared to the gross receipts for Stephen and his firm. Furthermore, the retroactivity of any such awards is purely within the discretion of the court. *In re Marriage of Freesen,* 275 Ill. App. 3d at 106, 655 N.E.2d at 1150. Accordingly, we find no abuse of the court's discretion in the award of or the amount awarded with respect to the issues of child support and maintenance.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Madison

County.

¶ 16 Affirmed.