2016 IL App (5th) 150139-U

NO. 5-15-0139

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ULRICH HELMUT REICHARD,	)	Jackson County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 11-D-170
	)	
FRAENZE REICHARD,	)	Honorable
	)	Kimberly L. Dahlen,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: As the circuit court ruled on a substantial issue in the parties' proceedings, it did not err in denying the appellant's motion for substitution of judge as a matter of right; the circuit court's order awarding maintenance to the appellee in an amount and duration calculated using the guidelines, even though the guidelines were prospectively effective, was not an abuse of discretion; and, the amount and duration of the maintenance awarded to the appellee was not an abuse of discretion.

¶ 2 The appellant, Ulrich Helmut Reichard (Ulrich), appeals from the final judgment of the circuit court of Jackson County issued on January 23, 2015, dissolving his approximately 14-year marriage to Fraenze Reichard (Fraenze). He argues that the trial

court abused its discretion in both awarding maintenance to Fraenze and in its assessment of the maintenance amount and duration. Ulrich also appeals the trial court's denial of his motion for substitution of judge as a matter of right, asserting that because no ruling was made on any substantial issue in the case, the trial court's decision was improper. For the following reasons, we affirm.

¶ 3 The following facts pertain to Ulrich's complaint raised on the pleadings. On November 3, 2011, Ulrich filed a petition for dissolution of marriage; the parties filed an affidavit of separation and waiver of two-year separation on December 8, 2011. No hearing was held on the first stage issue of grounds as both parties were in agreement, and on December 12, 2011, the trial court found grounds of irreconcilable differences based upon the stipulation of the parties.

¶ 4 On June 4, 2012, the parties entered into a joint custody and joint parenting agreement concerning their two children born to the marriage, F.L. (born October 27, 2000) and R.A. (born September 20, 2002). On September 28, 2012, Fraenze filed a petition for temporary relief requesting that Ulrich pay child support. On October 15, both parties' attorneys appeared before the trial court. On October 29, 2012, the court entered an order stating that "having pre-tried the issues with counsel, is advised that the parties have reached an agreement." The parties agreed that Ulrich would pay $1,107 per month in support and that the parties would equally divide the monthly child stipend received from the German government. The court "approve[d] the agreement reached by the parties" and entered an order to that effect. Numerous case management conferences were held thereafter.

¶ 5 On January 13, 2014, Ulrich filed a motion for substitution of judge as a matter of right, and in the alternative, substitution for cause, pursuant to sections 2-1001(a)(2) and (3) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(2)-(3) (West 2012)). Following a hearing on the motion on January 31, 2014, the trial court (Judge Dahlen) denied the motion, finding that it had made substantive rulings by (1) finding grounds of irreconcilable differences pursuant to the stipulation of the parties and (2) finding in favor of Fraenze's motion for temporary child support pursuant to the parties' agreement on the terms. The motion for substitution with cause was assigned to another judge, who denied that motion in an order filed on March 11, 2014.

¶ 6 Ulrich first argues that neither the trial court's finding of grounds of irreconcilable differences nor the ruling on temporary child support qualified as substantial rulings that would prevent it from denying his motion for substitution. By statute, a party is entitled to substitution of judge as of right if, prior to the filing of the motion, the court has not ruled on a substantial issue. 735 ILCS 5/2-1001(a)(2) (West 2012); *In re D.M.*, 395 Ill. App. 3d 972, 976 (2009). A substantial ruling is one that is directly related to the merits of the case. *City of Granite City v. House of Prayers, Inc.*, 333 Ill. App. 3d 452, 461 (2002). Our review of a trial court's ruling on a motion for substitution of judge as of right is *de novo. In re D.M.*, 395 Ill. App. 3d at 977.

¶ 7 Ulrich argues that no substantial issue had been ruled on in this case, because the parties agreed to the grounds for the dissolution of marriage and to the issues regarding the temporary child support, and the trial court simply ratified these agreements. We decline to discuss whether or not the court made a substantial ruling regarding the

grounds for the dissolution of the marriage, as we find that the temporary child support order was a substantial ruling in these proceedings.

¶ 8 In support of his contention, Ulrich notes that an agreed order is based upon the parties' agreement and is contractual in nature; as a recordation of the parties' private agreement, it is not an adjudication of their rights. *In re M.M.D.*, 213 Ill. 2d 105, 114 (2004). Thus, once such a decree has been entered, it is generally binding on the parties and cannot be amended or varied without the consent of each party. *Id.* Pursuant to this logic, Ulrich asserts that "a court's discretion whether or not to issue an order based upon an agreement of the parties is severely limited" and therefore such a ruling cannot be considered substantial.

¶ 9 However, the argument that a ruling is not substantial because it was based upon the agreements of the parties has already been rejected by our courts. See *In re D.M.*, 395 Ill. App. 3d 972, 976-77 (2009) (finding that an order based on the agreement of the parties may nevertheless be a substantial ruling because the trial court retains the discretion to accept or reject the agreement before issuing the order). Even if the trial court's discretion in this instance was indeed "limited," the court nevertheless made the ultimate decision to accept or reject the parties' agreement and enter the order accordingly. As the court's order clearly stated that the parties had pretried the issues with counsel, and because child support was one of the issues still undetermined as of the second stage hearing, we find that the temporary child support order was a substantial ruling and "it is the court, and not the parties, that has so ruled." *In re D.M.*, 395 Ill. App. 3d at 977.

¶ 10 Even if we did not find this ruling to be substantial, however, the trial court may properly have denied the motion because Ulrich had an opportunity to form an opinion about Judge Dahlen. A motion for substitution of judge may also be denied, in the absence of a substantive ruling, if the movant had the opportunity to "test the waters" and form an opinion as to the judge's reaction to his claims. *In re D.M.*, 395 Ill. App. 3d at 976-77. The purpose of this policy is to prevent the moving party from "judge shopping" until he finds a jurist who is favorably disposed to his cause of action. *Granite City*, 333 Ill. App. 3d at 461. The parties participated in multiple case management conferences, and Ulrich filed his motion for substitution more than two years into these proceedings, long after he had the opportunity to discern Judge Dahlen's opinions on the issues. We hold, therefore, that the trial court did not err by denying Ulrich's motion for substitution of judge as a matter of right.

¶ 11 We turn to the substantive matter in this appeal, that is, Ulrich's assertion that the trial court's award of maintenance was improper, and that even if we find that it was appropriate, that the amount and duration of the maintenance awarded was unreasonable.

¶ 12 Prior to this proceeding, the parties presented a five-page stipulation to the trial court containing their agreed-upon issues. The parties stipulated to the following: that Ulrich would continue to provide health care coverage for the children, and that he would take the tax exemptions for the children until Fraenze had income to qualify for tax exemptions and credits; that Ulrich would maintain his life insurance through his employer with a trust established for the children as beneficiaries; that Ulrich would retain the marital home but assume the mortgage debt and a $10,000 loan the parties had

taken for home repairs, and would also pay Fraenze $10,000 as her share of the equity; and that Ulrich's accumulated retirement funds through his self-managed pension would be divided evenly after a qualified domestic relations order was entered. The bank accounts of the parties, along with miscellaneous personal property and the marital/nonmarital property, was already divided. The parties agreed that child support would be on the basis of 28% of Ulrich's net income less 28% of Fraenze's net income, and the parties equally divided the child stipends that each of the children receive from the German government.

¶ 13 The following facts were adduced from the parties' second stage bench trial held on November 13 and 14, 2014. At the time of the hearing, Ulrich was 50 years old and Fraenze was 34 years old. Both parties were legal permanent residents of the United States and retained their German citizenship. The parties were married on September 22, 2000, while living in their native Germany; they ceased cohabitation in January, 2010, and thus were separated for five years before the marriage was dissolved. After the separation, Ulrich continued to live at the marital home, which was purchased when the parties first moved to Carbondale, while Fraenze moved to a duplex.

¶ 14 Ulrich earned a Ph.D. prior to the marriage, and in the summer of 2006, he came to the United States to begin employment at Southern Illinois University (SIU). At the time of the hearing, he was an associate professor in the anthropology department. Fraenze joined her husband in Carbondale in February, 2007, after finishing her studies in Germany and graduating with the German equivalent of a master's degree in fine arts. Ulrich was employed while Fraenze was attending school in Germany full time and paid

all living expenses and child care expenses, though Fraenze's father provided a small amount of financial assistance for Fraenze's art supplies.

¶ 15 Until their separation in 2010, the parties enjoyed two trips each year to Germany, during both the summer and Christmastime. After the separation, Ulrich has taken the children to visit family in Germany approximately once per year in the summer, with Ulrich's parents' financial assistance; Fraenze has visited once since 2010.

¶ 16 Regarding the parties' employment, Ulrich's work at SIU was constructed as a nine-month academic appointment, and he spent a minimum of four weeks during the summer researching primates in Thailand. Fraenze was the primary care provider for the children and maintained the household. Fraenze later began working two part-time jobs, one at the Carbondale New School as a teacher's aide, and the other providing child care for a Carbondale resident. After the separation, Fraenze began pursuing a degree in early childhood education at John A. Logan College (JALC) on a part-time basis. Fraenze testified that 63 semester hours are required to complete the program, and she has completed 20 hours and hoped to receive credit for the art class requirement based on her prior education. Fraenze testified that JALC's tuition and fees amount to $99 per semester hour.

¶ 17 In regards to financial matters, Fraenze earned approximately $9 per hour at both jobs, and her monthly gross income is approximately $949 per month. She testified that based upon her present income, which did not include the $1,107 she received monthly in child support, she did not end up owing income tax. Both Fraenze and Ulrich also received $230 per month as a subsidy from the German government. Fraenze testified

that she had approximately $1,500 in savings, as well as 800 euros (approximately $1,000) in a German bank account. Franze was to receive one-time payments for (1) her equity in the marital residence, valued at $10,000, and (2) half of Ulrich's retirement funds, approximately $59,000. She stated that she had no student loan debt or credit card debt, though she owed her family some money; she agreed that it would be fair to say that she is leaving the marriage debt-free. Fraenze testified that during the three summer months, she had $556.80 left over after her expenditures, but during the nine-month school year, her monthly expenditures exceeded her income by $59.25.

¶ 18 Fraenze agreed that she was not interested in an employment opportunity to take on additional hours at a higher rate of pay at Carbondale New School; however, her testimony indicated that this job opportunity interfered with both her child care job and her JALC coursework, and required a bachelor's degree in education, which she had not yet obtained. She testified that she was attending JALC to enhance her employability.

¶ 19 Ulrich earned $65,811 in 2013, and his anticipated 2014 salary was $75,309.72 based on his October 2014 pay stub, which reflected that his monthly gross income was $6,275.81. After deductions (*e.g.*, child support, taxes, and insurance), Ulrich's monthly net income was $3,117.58. Ulrich's assets included approximately $3,117 in his checking account and $11,525 in his saving account with SIU Credit Union; nonmarital stocks valued at $2,700; both a German company pension and a German private pension; rental property in Germany, which Ulrich testified collects rent but operates at a loss; and the parties' marital home, appraised at $113,000. Ulrich would also retain the other half of his retirement fund, approximately $59,000. Ulrich's debts included a $79,000 loan

borrowed from his parents and sisters for the purchase of the marital home, though at the time of the hearing he was paying only interest, $1,580 per year; a mortgage with a balance of $3,185, breaking down to $517-per-month payments concluding in the spring of 2015; and the loan for home repairs, with a balance of $9,632. Ulrich presented an exhibit detailing his monthly income versus expenditures, which estimated that he operated at a monthly deficit of $359.50.

¶ 20 In the parties' closing arguments, Fraenze requested rehabilitative maintenance in the amount of $700 per month for 48 months; this would enable her to quit one of her part-time jobs, thereby facilitating a quicker completion of her degree by allowing her to take more coursework per semester while still maintaining her responsibilities toward her children. Ulrich requested that Fraenze not be awarded maintenance, as he already supported her through her art degree and "as a matter of fundamental fairness" did not want to finance a third educational program. He also pointed to the approximately $69,000 she was acquiring as a result of the proceedings as evidence of an "adequate amount of marital property *** that compels [the] trial court to deny maintenance entirely."

¶ 21 After considering the statutory factors (see 750 ILCS 5/504 (West 2012)), the trial court's January 23, 2015, order found that maintenance in the amount of $900 per month for 8.4 years was proper under the circumstances. In regards to whether maintenance was necessary, the court considered the income and property of each party and their needs. The court also considered the parties' present and future earning capacity, noting that there was no evidence that Fraenze had employable skills that would allow her to earn

more money than she was currently making, that she did not decline any employment for which she is qualified, and that she was obtaining her education degree to become self-sufficient. The court also noted that Fraenze's earning capacity had been impaired during the marriage, as she was responsible for the domestic duties until the parties separated, but was currently seeking a degree that would enable her to support herself.

¶ 22 The court also considered the duration of the marriage and the standard of living that was established during the marriage. The court noted that the parties lived frugally, however, once the divorce was completed, Fraenze would have to obtain her own insurance and over half of what she earned would go towards rent. Unlike during the marriage, Fraenze was no longer able to afford trips with the children to Germany to visit family.

¶ 23 In regards to the tax consequences of the equal division of Ulrich's retirement fund, the trial court stated that according to the expert opinion sought for this purpose, Fraenze will not have to pay a tax penalty for early withdrawal from the fund if she uses the money for educational expenses. Though there was a question as to whether Fraenze could also use the money for housing without penalty, the court found that "even if this is done, [Fraenze would be] unable to come close to the standard of living established during the marriage." The court also noted that Ulrich would receive the tax exemptions for the children because he was paying the noncovered medical and their insurance. As for contributions and services by the party seeking maintenance to the education and career of the other spouse, the court acknowledged that Fraenze did not contribute

financially to Ulrich's education, while Ulrich paid for most of Fraenze's art education in Germany. Fraenze, however, was responsible for the home and children.

¶ 24 Noting that the goal of the Illinois Marriage and Dissolution of Marriage Act (Act) is to make the parties mutually independent after dissolution, the trial court found that the parties did not have sufficient property to allow both of them to live the lifestyle to which they have become accustomed. The court determined that rehabilitative maintenance was necessary for Fraenze. In determining the amount and duration, the court noted that the new guidelines were to go into effect on January 1, 2015, and as such "do not apply to this case, but the Court in its discretion is following those guidelines to determine maintenance in this case."

¶ 25 Using the guidelines for parties with a combined gross income of less than $250,000, the trial court found that maintenance was to be calculated as 30% of the payer's gross income less 20% of the payee's gross income, provided that the amount of the maintenance award plus the payee's gross income amount does not exceed 40% of the combined gross income of the parties. The court found that this amounted to $20,320.92 per year in maintenance, which when combined with the payee's gross income amount, was not in excess of 40% of the parties' combined gross income. This amounted to maintenance of $1,693.41 per month; however, the court deviated from the guidelines in light of the monthly expenses incurred by Ulrich versus those of Fraenze, and ordered maintenance in the amount of $900 per month. The court also noted that the guidelines provided that for a marriage between 10 and 15 years, the duration of maintenance should

be 60% of the duration of the marriage; thus, the court concluded that the appropriate duration for the maintenance was 8.4 years.

¶ 26 On appeal, Ulrich contests the trial court's factual and legal determinations regarding maintenance. He asserts that the court abused its discretion in awarding Fraenze maintenance where it erroneously analyzed the maintenance factors, as he cannot reasonably pay maintenance due to a negative monthly cash flow; further, the court applied a law that did not exist at the time of the second stage hearing to arrive at its decision, denying both parties a chance to address the statute. Finally, Ulrich argues that even if maintenance was appropriate, the amount and duration exceed Fraenze's reasonable needs because she had sufficient assets awarded to her in the dissolution proceedings to meet her living expenses, school expenses, and to maintain the modest lifestyle that the parties had during the marriage.

¶ 27 We first dispel Ulrich's notion that the trial court's determination was an abuse of discretion where it followed the guidelines provided in the revised statute that did not take effect until January 1, 2015. The court specifically noted that the guidelines were prospectively effective, but it chose to utilize them in its discretion. There is no authority to back Ulrich's assertion that the court could not consider the guidelines, which retain the tenet that a trial court has ultimate discretion over determining the amount and duration of maintenance; the guidelines simply aim to help the courts provide more consistent results. Furthermore, Ulrich cannot claim that the court's use of the guidelines was harmful, as the court in this instance deviated from them when it felt that the amount was not appropriate given the circumstances. We therefore find that the trial court's use

of the guidelines, even though they were prospectively effective in this case, was not an abuse of discretion.

¶ 28 We turn to Ulrich's assertion that awarding maintenance was inappropriate in this instance. A trial court's determination of maintenance will not be altered absent an abuse of discretion or a finding that the award is against the manifest weight of the evidence. *In re Marriage of Keip*, 332 Ill. App. 3d 876, 879 (2002).

¶ 29 Pursuant to section 504(a) of the Act, a trial court may grant maintenance to either spouse in such an amount and for such a period of time that the court deems just after considering all relevant factors. 750 ILCS 5/504(a) (West 2012). First, a court must consider the resources and needs of each party. *Id*. 5/504(a)(1), (a)(2). Next, a court must look at each party's present and future earning capacity and any impairment of said earning capacity because of time devoted to domestic duties or forgone or delayed education, training, employment, or career opportunities due to the marriage. *Id*. 5/504(a)(3), (a)(4). Similarly, a court must consider the amount of time needed to acquire education, training, and employment and whether he or she is able to engage in appropriate employment or is the custodian of a child, making it appropriate for that party not to seek employment. *Id*. 5/504(a)(5). A court also must look at the standard of living established during the marriage and the duration of the marriage. *Id.* 5/504(a)(6), (a)(7). Other factors include the parties' ages and their physical and emotional conditions, any tax consequences of the division of property, any contributions made to the education or career of the other spouse, and any valid agreement between the parties. *Id*. 5/504(a)(8)-

(a)(11). Lastly, a court may also consider any other factor that the court expressly finds to be just and equitable. *Id.* 5/504(a)(12); *Keip*, 332 Ill. App. 3d at 879.

¶ 30 Here, the trial court meticulously walked through the section 504(a) factors and plainly applied them to the evidence before it. The court reasonably concluded that the parties had disparate incomes, that Fraenze's earning capacity had been impaired during the marriage due to her domestic responsibilities, that Fraenze had no employable skills but was working towards becoming self-sufficient via her education degree, and that Ulrich was receiving the tax benefits resulting from the proceedings. Despite Ulrich's assertions of his negative monthly cash flow preventing his ability to provide maintenance, we note that Ulrich's monthly net income is $3,117.58 to Fraenze's approximately $950. By Ulrich's own admission, his cash flow will improve when the mortgage on the marital residence ends, and he has not indicated when he will begin paying back the principal owed on the debt to his parents and sister.

¶ 31 Furthermore, in regards to Ulrich's argument that Fraenze was awarded sufficient marital property in the proceedings, we note that Fraenze is not required to impair her capital in order to maintain herself in a similar manner to that established during the marriage. *In re Marriage of Thornton*, 89 Ill. App. 3d 1078, 1080 (1980); *Keip*, 332 Ill. App. 3d at 882. As the trial court noted, there is simply insufficient property for both parties to maintain the same lifestyle they led as a couple, and the effect of dividing one household into two is especially severe when there has been but one wage earner. Where there is insufficient income-producing property, maintenance is both a valid and necessary consideration. *In re Marriage of Gunn*, 233 Ill. App 3d 165, 174 (1992). After

a review of the record, we conclude that the factual findings of the trial court were not against the manifest weight of the evidence and the trial court's award was not an abuse of discretion.

¶ 32 Finally, Ulrich asserts that even if maintenance was appropriately awarded, the amount and duration were unreasonable as they exceeded what Fraenze requested. Two of the goals of maintenance are to terminate the financial interdependence of former spouses, if possible, and to allow an ex-spouse the time and resources to achieve self-sufficiency. *Keip*, 332 Ill. App. 3d at 878-79. The court looks to the reasonable needs of the party seeking maintenance as measured by the standard of living the parties enjoyed during their marriage. *Id.* at 880.

¶ 33 The trial court is not bound by the parties' requests at trial; it may, in its discretion, award an amount and duration it feels appropriate in the circumstances. The benchmark is not whether Fraenze is meeting her minimum needs, but whether she is receiving assistance in achieving a standard of living similar to that of the marriage. *Gunn*, 233 Ill. App. 3d at 175. Here, the maintenance award was not excessive in light of Fraenze's reasonable needs, and there is no reason that maintenance should be required to end when Fraenze completes her degree; while Fraenze is taking steps towards self-sufficiency, this will not occur immediately upon her completion of her education and obtaining employment in that field. We therefore cannot say that the amount and duration of the maintenance award was an abuse of discretion.

¶ 34 For the foregoing reasons, we affirm the decision of the circuit court.

¶ 35 Affirmed.