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2011 IL App (3d) 100621-U

Order filed November 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
AMY B. FERKEL,)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Petitioner-Appellant and)	
Cross-Appellee,)	
)	Appeal No. 3-10-0621
and)	Circuit No. 06-D-370
)	
THOMAS M. FERKEL, JR.,)	
)	Honorable
Respondent-Appellee and)	Jeffrey W. O'Connor,
Cross-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in making the following rulings: (1) the distribution of marital assets and debts; (2) the valuation of the dental practice; (3) the award of maintenance to respondent; or (4) ordering the petitioner to pay a portion of respondent's attorney fees.
- ¶ 2 On January 22, 2010, a judgment was entered in the circuit court of Rock Island County, dissolving the marriage of petitioner, Amy B. Ferkel, and respondent, Thomas M. Ferkel, Jr. Following the divorce, petitioner filed an appeal arguing that the trial court abused its discretion

in ordering: (1) an inequitable distribution of the parties' marital assets and debts; (2) maintenance to respondent; and (3) petitioner to pay a portion of respondent's attorney fees. Respondent filed a cross-appeal arguing that the trial court abused its discretion in: (1) ordering an inequitable distribution of assets and debts; (2) calculating the valuation of the dental practice; (3) calculating the amount and duration of maintenance; and (4) failing to order petitioner to pay a larger portion of respondent's attorney fees. We affirm.

¶ 3

FACTS

¶ 4 Petitioner and respondent were married on July 13, 1991. The marriage produced three children. Prior to the marriage, petitioner had received a four-year college degree; respondent had received a high school degree and completed an automotive and diesel program. During the marriage, petitioner attended and graduated from dental school. Respondent quit his job in order to move to Alton, Illinois, to be with petitioner as she completed her degree. While petitioner was in school, respondent found employment and worked to support the family; petitioner did not work. Two years after her graduation, petitioner and respondent purchased a dental practice for \$100,000, and respondent quit his job in order to stay at home and take care of the children. Respondent remained unemployed and acted as the primary caregiver to the children for 10 years.

¶ 5 Petitioner filed for divorce on June 22, 2006. Thereafter, respondent moved out of the marital residence. Following his departure, respondent worked part time at Hy-Vee, earning a total net monthly income of \$775.93. Petitioner continued to practice dentistry, and earned a total net monthly income of \$5,175. During this time, respondent also attended classes at a community college in an effort to obtain a college degree in business. In order to pay for his

college classes, respondent borrowed money from his mother. Respondent had borrowed money from his mother on other occasions, and throughout the marriage, respondent and petitioner borrowed approximately \$81,000 from her. The loans were memorialized in numerous writings, many that included a heading acknowledging the document to be a loan to both petitioner and respondent. Most of the writings were also signed by respondent and his mother.

¶ 6 On January 22, 2010, the circuit court of Rock Island County entered a judgment for the dissolution of petitioner and respondent's marriage. At the time of the judgment, petitioner was 48 years old, and respondent was 47 years old. The marriage had lasted 19 years. Petitioner was awarded custody of the couple's three minor children, subject to respondent's visitation rights. Respondent was ordered to pay \$248 a month in child support.

¶ 7 Pursuant to the judgment, respondent was awarded the following: (1) the marital residence, which had a value of approximately \$90,000; (2) a 2001 Chrysler Town and Country van; (3) a 1988 Toyota pickup truck; (4) a 2005 Honda motorcycle; (5) a lawn mower; (6) a portable dishwasher; and (7) a snow blower. Respondent was also assigned the following debts: (1) the I.H. Mississippi Valley Credit Union debt with \$786 outstanding; (2) the Best Buy credit card debt; (3) loans from respondent's mother; and (4) one-half of the Genesis Psychology Associates debt.

¶ 8 Petitioner received the following: (1) the dental practice, which the trial court valued at \$40,450; (2) life insurance policies; (3) a coin collection; (4) a firearm collection; (5) a 1996 Toyota Avalon; and (6) a 1970 Chevrolet Chevelle. The judgment made petitioner solely liable for the following debts: (1) the mortgage on the house through American Bank and Trust Company, valued at approximately \$43,000; (2) the I.H. Mississippi Valley Credit Union debt;

(3) the Capital One credit card debt; (4) the Discover credit card debt; (5) one-half of the Genesis Psychology Associates debt; and (6) a life insurance loan. Aside from the distribution of marital assets, the trial court also ordered petitioner to pay: (1) \$10,000 towards respondent's attorney fees; and (2) the sum of \$600 a month in maintenance for three years.

¶ 9 During the divorce proceedings, petitioner offered the testimony of Mark Peterson, a certified public accountant with 34 years of experience. According to Peterson, the dental practice was worth approximately \$42,450. Peterson arrived at that figure based on the value of the accounts receivable, equipment, and cash on hand. Respondent offered the testimony of Henry Hemmen, the owner of an accounting practice that specialized in the buying and selling of dental practices. Hemmen said that the dental practice would sell for approximately \$196,000. That price would include approximately \$69,100 worth of good will and a covenant not to compete; \$90,000 for dental charts which would have no value if the business was not sold; \$27,500 for equipment that came with the dental practice; and \$9,400 for equipment purchased since 2000. Hemmen's figure did not factor in the accounts receivable.

¶ 10 Following the trial court's judgment dissolving the marriage, petitioner appealed. Her appeal was followed by a cross-appeal from respondent.

¶ 11 ANALYSIS

¶ 12 The first issue on appeal is whether the trial court's distribution of assets was an abuse of discretion. Pursuant to section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (the Act), marital property shall be divided in just proportions considering a number of factors, including the following: the value of the property assigned to each spouse; the duration of the marriage; and the relevant economic circumstances, age, health, occupation, and employability

of each spouse. 750 ILCS 5/503(d) (West 2010). Just proportions does not mean strict equality, but only an equitable division based on the surrounding circumstances. *In re Marriage of Nelson*, 297 Ill. App. 3d 651 (1998). The trial court's distribution of marital property will not be reversed absent an abuse of discretion, such that no reasonable person would take the view adopted by the trial court. *In re Marriage of Polsky*, 387 Ill. App. 3d 126 (2008).

¶ 13 Both petitioner and respondent contend that the trial court abused its discretion in distributing the marital assets. In the judgment of dissolution, petitioner received the dental practice, valued at \$40,450, and a number of lesser assets. Respondent received the home, valued at approximately \$90,000, and a number of assets that were roughly comparable in value to the smaller assets received by petitioner. With regard to the debts, petitioner was assigned the mortgage, valued at approximately \$43,000, the Capital One credit card debt, valued at \$21,072, and a number of smaller debts. Respondent was assigned the loans from his mother, valued at approximately \$81,000, and several smaller debts.

¶ 14 Petitioner contends that she received an unjust portion of the debt, primarily because the trial court should not have considered loans from respondent's mother to be marital debt. Generally, a transfer from a parent to child is presumed to be a gift; however, that presumption may be overcome by clear and convincing evidence to the contrary. *In re Marriage of Marcello*, 247 Ill. App. 3d 304 (1993). Here, respondent produced a number of notes signed by himself and his mother, many that specifically stated that they represented loans to respondent and petitioner. Respondent and his mother also testified that the money was given to petitioner and respondent as loans. It is the trial court's function to assess the credibility of witnesses and the weight to be accorded their testimony. We cannot say that the trial court abused its discretion in

determining that the couple owed money to respondent's mother or in its distribution of that responsibility.

¶ 15 Petitioner also contends that the trial court erred in distributing the marital residence to respondent while assigning her the mortgage. Generally, when dividing marital property, trial courts should seek a high degree of finality so that the parties can plan their future with certainty and are not encouraged to return repeatedly to the courts. *In re Marriage of Hollensbe*, 165 Ill. App. 3d 522 (1988). Nonetheless, without more, it is not an abuse of the trial court's discretion to simply award the marital residence to one party and assign the mortgage to the other. See *In re Marriage of Zander*, 273 Ill. App. 3d 669 (1995). On these facts, we cannot say that the trial court abused its discretion by awarding respondent the marital residence and petitioner the mortgage.

¶ 16 Respondent argues that the trial court abused its discretion when it calculated the value of the dental practice at \$40,450. Respondent contends that the dental practice is worth more and that the trial court's supposed erroneous evaluation skewed the distribution of assets. The valuation of marital assets is a matter for the trial court, and the court's valuation will not be disturbed as long as it is within the range testified to by the experts. *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691 (1998).

¶ 17 Both petitioner and respondent produced experts at trial. Petitioner's expert testified that the dental practice would be worth approximately \$42,450. That value included the accounts receivable, equipment, and cash on hand. Respondent's expert testified that the dental practice had a value of \$196,000; however, he had calculated the value as if the practice were to be sold. Therefore, his number included good will and other irrelevant factors. See *In re Marriage of*

Schneider, 214 Ill. 2d 152 (2005) (good will of dental practice was not to be considered in dividing the marital assets). With regard to the relevant figures, respondent's expert determined a value of \$36,900, based on the amount of equipment he believed was in the dental practice. Because the trial court's valuation was within the range testified by the experts, we do not find it to be an abuse of discretion.

¶ 18 The distribution of the marital assets, as outlined above, constituted a just division of the marital property that adequately reflected the relevant statutory factors, including the value of the property, length of the marriage, and the economic position of each spouse. Further, the trial court acted within its discretion in finding that loans existed between the parties and respondent's mother and in its valuation of the dental practice. Therefore, we cannot say that the trial court abused its discretion in its distribution of the marital property.

¶ 19 Petitioner next contends that the trial court abused its discretion in awarding maintenance to respondent. Respondent argues that the trial court abused its discretion in calculating the amount and duration of the maintenance award. An award of maintenance is within the sound discretion of the trial court, and will not be disturbed unless the trial court abused its discretion or the award was against the manifest weight of the evidence. *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075 (2011). Section 504 of the Act lists 12 enumerated factors to be considered when a trial court renders an award of maintenance in a dissolution case. 750 ILCS 5/504 (West 2010). However, the trial court has wide latitude to consider the needs of the parties and is not limited to the factors enumerated in section 504. *In re Marriage of Mohr*, 260 Ill. App. 3d 98 (1994).

¶ 20 In this case, the trial court ordered petitioner to pay respondent \$600 a month in

maintenance for three years. During the proceedings, evidence was presented to establish that the parties had been married for 19 years. Prior to the marriage, respondent had obtained a high school degree and completed an automotive and diesel program. During the early part of the marriage, respondent supported the family while petitioner studied to become a dentist. Respondent then was unemployed for 10 years while he took care of the parties' minor children. Respondent no longer possessed the skills necessary to obtain a job in the automotive field, and he had begun taking college classes in anticipation of obtaining a degree in business in approximately 2½ years. Since the breakup of the marriage, respondent had been unable to obtain full-time employment and was earning a net monthly income of approximately \$775.93 at Hy-Vee. Petitioner, on the other hand, was employed as a dentist and earned a net monthly income of approximately \$5,175. Given the evidence presented during the proceedings, the trial court's order of maintenance was within its discretion and will not be disturbed by this court.

¶ 21 Finally, petitioner argues that the trial court abused its discretion when it ordered her to pay a portion of respondent's attorney fees which was greater than the outstanding balance of his fee account. Respondent argues that the trial court abused its discretion by not ordering petitioner to pay a larger amount of his attorney fees. Generally, each party has the primary obligation to pay his own attorney fees, but the trial court does have discretion to award fees. *In re Marriage of Orlando*, 218 Ill. App. 3d 312 (1991). Pursuant to section 508(a) of the Act, the court may order any party to pay a reasonable amount for his own or the other party's costs and attorney fees, but only after due notice and hearing and after considering the financial resources of the parties. 750 ILCS 5/508(a) (West 2010). Further, the work for which compensation is sought must be shown to be reasonably required and necessary for the proper performance of

legal services under the circumstances. *In re Marriage of Douglas*, 195 Ill. App. 3d 1053 (1990). The allowance of attorney fees rests within the sound discretion of the trial court and will not be disturbed unless it is clearly abused. *Orland*, 218 Ill. App. 3d 312.

¶ 22 A review of the record makes it evident that the trial court had a clear understanding of the financial resources of both parties. Further, respondent submitted an affidavit from his attorney outlining the attorney's credentials, hourly rate, and the time and labor the case required. We also note that section 508 makes no distinction between attorney fees that have already been paid and those that remain due; therefore, the fact that respondent's remaining balance was less than the amount that petitioner was ordered to pay is irrelevant. In view of the evidence before the trial court, we conclude that the court's award of attorney fees was properly within its discretion.

¶ 23 **CONCLUSION**

¶ 24 The judgment of the circuit court of Rock Island County is affirmed.

¶ 25 Affirmed.