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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF MICHAEL PERLMAN,)	Appeal from the Circuit Court
)	of Lake County.
Petitioner-Appellee,)	
)	
and)	No. 07-D-1932
)	
JACLYN PERLMAN,)	Honorable
)	Joseph V. Salvi,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* In modifying a maintenance award, the trial court, on reconsideration, erred calculating former wife's reasonable needs and investment earnings, and imputing certain income. Affirmed in part and reversed in part.

¶ 2 In this post-dissolution proceeding, respondent, Jaclyn Perlman, appeals from the trial court's order granting petitioner's, Michael Perlman's, motion to reconsider its earlier order on Jaclyn's petition to extend maintenance. Jaclyn argues that the trial court, on reconsideration, erred in reducing her maintenance award to \$2,129.50 per month until age 66, at which point it will be reduced to \$1,008.50. She contends that the court's earlier finding that she was entitled to a \$5,180 monthly maintenance award was correct. We affirm in part and reverse in part.

¶ 3

I. BACKGROUND

¶ 4

A. Earlier Proceedings

¶ 5 The parties' 21-year marriage was dissolved on November 26, 2008. The court granted the parties joint custody of their two children, with primary residential custody awarded to Michael. Jaclyn did not pay child support or contribute toward the children's financial support or college expenses. Jaclyn received 55% (\$283,867) of the marital estate, and Michael received 45% (\$229,682).¹ The marital settlement agreement that was incorporated into the dissolution judgment awarded Jaclyn \$75,000 in annual maintenance. The payments, which were for varying amounts each month, were predicated on Michael's \$356,134 gross annual income and Jaclyn's \$10,000 gross annual income. The agreement provided that the payments would continue until the occurrence of the first of the following events: (1) Michael's death; (2) Jaclyn's death; (3) Jaclyn's remarriage; (4) Jaclyn's cohabitation on a resident, conjugal basis (as determined by a court); or (5) November 30, 2015 (*i.e.*, seven years following dissolution, at which time maintenance was reviewable if none of the preceding events occurred).

¶ 6 In 2011, Michael petitioned for modification of the dissolution judgment, arguing that a substantial change in circumstances (*i.e.*, reduction in his income) warranted a reduction in his maintenance obligation. His \$75,000 annual maintenance obligation (\$6,250 per month before taxes and \$5,187 per month after applying Jaclyn's 17% tax rate) had equaled 21% of his annual gross income and was equal to the number of years of the parties' marriage. He argued that, since entry of the judgment, his income decreased (in 2010) to \$318,086 and that he was "on track" in 2011 to earn about \$35,000 less. Michael requested entry of an order requiring him to

¹ Jaclyn also received her non-marital estate, valued at \$123,113, and Michael received his non-marital estate, valued at \$90,661.

pay 21% of his gross income based upon his prior year's annual income. The parties stipulated that Michael's 2011 gross income was \$285,000, that 21% of that amount was \$60,000, and that this equaled 12 monthly payments of \$5,000 each.

¶ 7 The trial court granted Michael's petition, setting the maintenance obligation at 21% of Michael's gross income (payable in equal installments twice per month and subject to two true-ups in January of the following year to reflect Michael's actual income in the prior year and in September, after completion of his income tax returns). For 2012, the court determined that 21% of Michael's gross annual \$285,000 income was \$60,000 (or \$5,000 per month). The payments would continue until the occurrence of the aforementioned termination events, but the court imposed a May 1, 2015, filing deadline for any further petitions to extend or terminate maintenance. It also specified that it would conduct a *de novo* review of such petitions.

¶ 8 On appeal, this court held that the trial court had miscalculated the period for measurement of the modification. *In re Marriage of Perlman*, 2013 IL App (2d) 120753-U (affirming in part, reversing in part, and remanding for further proceedings).

¶ 9 B. Proceedings Leading to this Appeal

¶ 10 On April 29, 2015, Jaclyn petitioned for extension of maintenance, and, on the following day, Michael petitioned for termination of maintenance.

¶ 11 In her petition, Jaclyn argued that several factors weighed in favor of permanent (or at least an additional seven years of) maintenance: her age (61); the fact that she had significantly fewer assets than Michael; her minimal employment history; and her "severe" medical issues. She asserted that, without an extension of maintenance, she would be unable to pay for her day-to-day expenses and would be without sufficient assets to maintain the standard of living enjoyed by the parties during their marriage. Jaclyn noted that she earned minimal income each year,

excluding maintenance, half of which was derived from capital gains and dividends. She reported on her 2012 tax return \$7,072 in earnings, excluding maintenance. On her 2011 return, she reported \$12,925 in earnings, excluding maintenance. On her 2010 return, Jaclyn reported \$24,791 in earnings, excluding maintenance. Jaclyn asserted that she worked part-time and, despite her income and maintenance, she was “hardly able to cover her current reasonable and necessary monthly expenses.” She claimed that Michael had substantial assets and income far greater than her and was able to meet his monthly needs and expenses. Jaclyn also noted that most of her assets are illiquid.

¶ 12 Addressing her employment history, Jaclyn, who does not have a college degree and is a licensed cosmetologist, noted that, from June 2008 to April 2010, she was employed with Ross Discount. From 2010 to 2012, she was unemployed “due to the bad economy.” During these years, she also performed hair styling out of her home and sold, on commission, private-label cosmetics. Jaclyn began working at Macy’s in February 2012, but left that job in October 2012 to go work at Sephora (where she worked until she was terminated in January 2016). In 2014, Jaclyn contacted a pathway coach to assist her in obtaining full-time employment. She was unsuccessful.

¶ 13 Jaclyn stated that her job-search efforts have been impaired as result of her serious and chronic medical issues, which include five years of severe and chronic back pain (one physician diagnosed severe spinal arthritis and another diagnosed a synovial cyst on her spine). She underwent surgery to remove the cyst on April 14, 2015, but she will eventually have to undergo another surgery. Jaclyn also suffers from anxiety and ADD (attention deficit disorder).

¶ 14 In his petition to terminate maintenance, Michael, a certified public accountant, argued that his obligation to pay maintenance should be terminated because the marital estate was

disproportionately divided in Jaclyn's favor, he had already paid seven years' maintenance, and he paid all of the children's expenses. Also, he asserted that he was unaware of any efforts Jaclyn had made to pursue further education, income opportunities, or to increase her income and financial resources.

¶ 15 On April 22, 2016, the trial court awarded Jaclyn \$10,000 in interim attorney fees. On July 12, 2016, she petitioned for contribution of attorney fees.

¶ 16 A. June 2016 Hearing

¶ 17 1. Anthony Vertino

¶ 18 Anthony Vertino, a clinical psychologist, testified that he specializes in ADD. Jaclyn sought an evaluation from Vertino based on her psychiatrist's referral in order to rule out ADD and anxiety disorders and provide treatment recommendations. Vertino evaluated Jaclyn for two hours in February 2015, including administering tests. He diagnosed PTSD (resulting from abuse Jaclyn reported had occurred while she was a child), anxiety disorder, and ADD. He did not review any doctor's records; he received only the history that Jaclyn provided.

¶ 19 According to Vertino, Jaclyn reported that she had difficulty completing job tasks at Sephora, along with attendance issues. Vertino believed that Jaclyn's conditions interfered with her job performance. People with ADD get distracted very easily. Also, Jaclyn's anxiety would increase due to the time pressure of the job.

¶ 20 At counsel's request, Vertino met with Jaclyn a second time, for 45 minutes, to determine if the diagnoses had changed. They did not.

¶ 21 2. Michael

¶ 22 Michael, age 57, testified that he is a certified public accountant and works at BDO USA, an accounting firm, as a managing partner of the suburban Chicago tax practice. He started there

in January 2015. Previously, Michael worked at SS&G, Inc., where he was a shareholder. SS&G merged into BDO in January 2015. As part of the deal, Michael will receive seven annual goodwill payments of about \$61,000 and received the first payment in 2015. Michael also works as a general securities representative for Lincoln Financial Advisors, where he receives a commission. For 2015, he received \$20,000 from Lincoln (net of expenses). To date in 2016, he had earned about \$6,000 after expenses. At BDO, Michael is subject to a mandatory retirement age of 65. He will reach that threshold in 2024 and will no longer serve as a partner. Afterwards, there is the possibility that he could continue working there under a consulting arrangement.

¶ 23 Michael has not earned less than \$356,000 in gross income in any year after the divorce other than 2010. For the fiscal year ending June 30, 2016, Michael will earn \$374,000, plus the \$60,000 goodwill payment. For the calendar year 2015, he earned about \$313,600. After 2017, his compensation will be based on his performance and personal book of business, with no guaranteed income.

¶ 24 In his financial affidavit, dated, May 15, 2016, Michael listed a gross monthly income of \$28,685 (or \$344,220 annually), \$16,552 in net monthly income, \$16,778 in monthly living expenses, and \$2,075 in monthly debt service, leaving \$2,301 in total income available per month.

¶ 25 Michael remarried in 2013. His wife, Elyse, is a residential real estate agent and a loan originator. Michael's older child is 24 years old and his younger child is 22. He can keep them on his health insurance until they are 27 years old.

¶ 26 3. Jaclyn

¶ 27 Jaclyn, age 62, testified that she lives in Glenview in a townhouse that she owns. She

prepared her financial affidavit with assistance from Cathleen Belmonte Newman, who also testified.

¶ 28 Jaclyn completed one year of college, went to cosmetology school for two years, and is a licensed cosmetologist. During the marriage, she worked in a hair salon and did eyebrow shaping and makeovers at home. She did not work during the marriage. The most money Jaclyn has earned from work following the divorce is \$13,000 per year.

¶ 29 Jaclyn's 2015 income tax return reflects \$12,043 in wages, \$4,270 in dividend income, \$69,757 in alimony, negative \$626 in business income, and \$8,352 in capital gains. Her adjusted gross income was \$93,796.

¶ 30 In a May 23, 2016, financial affidavit, Jaclyn listed the following monthly income and expenses: \$6,117 in gross income, \$1,491 in tax and insurance obligations, \$5,036 in monthly living expenses. Her total income available per month, excluding outstanding legal fees of \$13,201 (after she had already paid \$68,384 in fees that year), is negative \$410. Jaclyn listed the following assets: \$64,001 in checking accounts, \$103,445 in a Fidelity brokerage account, \$3,058 in a 401(k) plan, \$449,275 in a Fidelity IRA, and \$1,774 in a Lincoln Financial Roth IRA. She also listed a \$135,645 mortgage on her condominium. Jaclyn's health insurance costs \$438 per month. She also listed the following additional monthly personal expenses: \$562 for "other," \$156 for long-term care insurance, and \$406 in prospective dental work (for a total between \$4,030 and \$5,730 for an implant, crown, and bitewing plate).

¶ 31 Addressing her job at Sephora, Jaclyn testified that she did skin care and color product sales. Just prior to her termination, she earned \$12.75 per hour. She was terminated in January because she was "often" late for work. She worked at Sephora for three years and three months. Her lateness was an issue the entire time she worked there. Jaclyn was not physically able to do

what her employer wanted her to do. She cannot lift 50 pounds, which was required in order to bring merchandise from the back room to stock in the bays. Jaclyn stated that her ADD and PTSD affected her ability to work. For example, if doing a makeover on a client, she was unable to complete it in 45 minutes; that is, she worked slower than most people doing that work. She was also required to stand for her entire shift (excluding her break), which was anywhere from four to eight hours long. Jaclyn suffered hip and back pain from standing. She needed to sit every three hours, but was not allowed to.

¶ 32 In the past three months, Jaclyn has applied for jobs in retail and customer service/receptionist. She was not hired. She applied for unemployment compensation, but was denied because of her tardiness issues. She appealed three times and was unsuccessful. Jaclyn works out of her home, doing keratin treatments, haircuts, and coloring. In 2016, she has earned \$700 from this work.

¶ 33 Jaclyn also applied for social security disability benefits in June. Her application at the time of trial was pending. If granted, she will receive \$1,064 (or \$1,075 as reflected in her affidavit) per month in 2016.

¶ 34 Jaclyn testified that she is not in good health. She has an arthritic spine, including four bulging discs; she is always in pain. Jaclyn underwent a laminectomy, which alleviated the pain for a while, but it has returned. She is doing physical therapy and saw a spine specialist. She was given two facet blocks. On July 26, 2016, she will undergo radiofrequency spinal ablation to deaden nerves in her spine. It is an outpatient procedure covered by her insurance. If it works, she will then address her groin and hip issues. Currently, she does physical therapy for her hip pain, which is caused by arthritis and bursitis. Her groin pain resulted from labral tears. Standing aggravates her pain. Jaclyn takes prescription medication for her pain; she also takes

medication for her anxiety and ADD, including Lexapro, Intuniv, and Deplin (prescribed by her psychiatrist, Dr. Carr, whom she sees once every three months).

¶ 35 Addressing her dental issues, Jaclyn stated that she had two extractions and a bone graft. She needs an implant (\$2,400) and a crown. Jaclyn owes her periodontist \$500.

¶ 36 Jaclyn's IRA is valued at \$438,000. She has not made any deposits into or withdrawals from it since the divorce. She also has a revocable trust with money from a 401(k) and from which she took money to pay her attorneys and for surgery. Her debts include: periodontist; mortgage; credit cards; and attorney fees (\$31,000). She has paid her attorneys \$68,000.

¶ 37 Her lifestyle has changed since the divorce. Jaclyn does not go to the same restaurants as she did during her marriage, nor does she eat the same food. She does not take Pilates class, belong to any clubs, or give gifts. She has old clothes, cannot purchase furniture or make home improvements, and cannot afford a car or vacations.

¶ 38 Other than maintenance, Jaclyn has no other source of income. Her IRA and trust accounts do earn money, which is reinvested.

¶ 39 Jaclyn is currently eligible for early social security benefits of \$818 per month. However, if she waits until she is age 66, her full retirement age, she will be entitled to \$1,121 per month; at 66 ½, she can receive \$1,325 per month, which includes an ex-spousal benefit.

¶ 40 On cross-examination, Jaclyn testified that, in 2013, 2014, and 2015, she asked to increase her hours to full-time at Sephora. Addressing her expense affidavit, which she prepared with Newman's assistance, Jaclyn included the following in her list of monthly living expenses for 2013 and 2014: \$197 per month for restaurants (twice per week), Ravinia (five times every summer), movies (three to four times per month), and outings with her friends (8 to 10 times per month). Jaclyn started taking ADD medication after Vertino assessed her (in 2015).

¶ 41 Under personal expenses on her financial affidavit (based on 2013 and 2014 expenses), Jaclyn listed \$811 per month for prospective dental expenses. These are part of the \$5,781 total expenses for all categories. On another exhibit (based on 2015 expenses), in an addendum, she listed \$562 per month in prospective dental expenses and \$5,036 in total expenses. The exhibit also reflects that she has \$64,000 total in two checking accounts, and over \$100,000 in her revocable trust account (which is not a retirement account). She paid \$200,000 for her condo in 2010

¶ 42 Her medical insurance is under COBRA, and it expires in July 2017. Afterwards, she must obtain private insurance, the premiums for which she expects will be higher. Jaclyn will be eligible for Medicare in three years (in 2019).

¶ 43 4. Cathleen Belmonte Newman

¶ 44 Cathleen Belmonte Newman owns F4 Financial, a niche financial firm that assists clients in preparing financial affidavits, balance sheets, and lifestyle analyses. She also provides expert testimony in divorce cases. The parties stipulated as to her expert status. Jaclyn retained Newman in November 2014 to review her post-divorce spending and assist her in preparing her financial affidavit. Newman prepared two affidavits: one in November 2015 (using records from 2013 and 2014) and an amended/supplemental affidavit in May 2016.

¶ 45 Newman and her staff reviewed Jaclyn's bank and credit card statements. Thus, figures in her financial affidavit were confirmed with actual documents, with two exceptions: historical and prospective dental expenses, which are for 2016. The affidavit does not list what insurance expenses will be after the 18-month COBRA period, nor does it take into account what Jaclyn will receive from Medicare when she turns 65. Illinois Comprehensive Health Insurance Plan coverage would cost between \$1,000 to \$1,300 per month (using 2015 rates). Jaclyn may or may

not be eligible for it; similarly, there are other options under the Affordable Care Act, but the rates are unknown.

¶ 46 As for income, Newman included dividend income, not Jaclyn's return on investments, because it is reinvested. She did not analyze Jaclyn's available income; she analyzed expenses. The income figures listed in the affidavit were taken from Jaclyn's income tax return.

¶ 47 Jaclyn has paid Newman \$3,000 and still owes \$3,500.

¶ 48 5. Bradley Angeletti

¶ 49 Bradley Angeletti, a private wealth manager and certified divorce financial analyst, testified on Jaclyn's behalf that he works at the Angeletti Group within Robert W. Baird and Company. Angeletti evaluated Jaclyn's financial viability. He verified the underlying assets and investments by reviewing Jaclyn's statements, but he did not verify the information in her affidavit. Angeletti testified that Jaclyn recently became one of his clients. Previously, she had another financial planner, Fidelity. Currently, Jaclyn owes Angeletti's firm \$7,000.

¶ 50 His report, dated June 1, 2016, utilized a life expectancy of age 92 for Jaclyn. Angeletti used social security data, which provides that the average life expectancy of a woman in her 60s is age 86.4. Twenty-five percent of women in that age bracket will live into their 90s and 10% of them will live past 95.

¶ 51 Angeletti calculated various scenarios in terms of the length of maintenance and investment returns. He assumed a 5.88% average annual rate of return. Angeletti chose this figure based on Jaclyn's age and profile, a growth-in-income style portfolio; it assumes funds are reinvested, unless they are required to meet a shortfall in income. When Jaclyn became Angeletti's client, he reduced her asset allocation from 80% stocks,² which he believes to be

² He testified that the portfolio she had with her prior advisor has historically appreciated

overly aggressive for a 62-year-old, to 60% stocks and 40% bonds. He testified that, if Jaclyn continues to receive \$69,757 in maintenance for an additional seven years, she will have sufficient funds to meet her needs through her life expectancy of age 92. However, if maintenance is terminated, Jaclyn will run no longer have sufficient income to meet her needs at age 78 and will have to dip into principal.

¶ 52 Currently, at age 62, Jaclyn's income equals \$81,800, which, *inter alia*, consists of \$69,000 in maintenance (as of 2015) and \$1,066 of part-time employment. No social security benefits are included in this calculation. At age 66, her income will increase to \$88,000 because she will, it is assumed, start receiving social security benefits (\$1,100 per month at age 66, versus \$830 per month at age 62). Angeletti testified that his firm ran a social security analysis to identify how to maximize Jaclyn's benefits, and age 66 is her full retirement age and she will receive full benefits from the program. Further, at age 66 and 7 months, she will be eligible for ex-spousal benefits, *i.e.*, 50% of Michael's social security benefits that would be greater than her own benefits. Her benefit would be over \$1,300 per month at this point. Angeletti opined that the difference over the term of her life expectancy of taking benefits at age 66 versus age 62 is over \$200,000 (*i.e.*, there is a financial advantage to waiting until full retirement age to start collecting benefits).

¶ 53 Addressing investment earnings, Angeletti explained that he used a 5.88% estimated average rate of return on Jaclyn's assets. Earnings were calculated by adding assets and income and then subtracting expenses. Between 70% and 80% of assets were assumed to be in retirement accounts and the remaining assets in trust or taxable accounts. Angeletti's program

7.1% per year. However, he did not know what her portfolio's actual rate of return had been prior to the time he began working with her.

factored in the most tax-efficient way to fund Jaclyn's goals of retirement income and health care expenses.

¶ 54 Turning to social security disability income, Angeletti testified that a person cannot receive social security benefits at the same time they are receiving social security disability income. Thus, if Jaclyn receives disability benefits, she cannot also receive social security benefits at the same time.

¶ 55 Angeletti's program assumed a standard tax deduction. He was unaware that Jaclyn has had about \$30,000 of itemized deductions in the past three tax years. He also assumed \$14,632 in prospective dental expenses. This is separate from the \$406-per-month in prospective dental work on Jaclyn's affidavit. His total of \$18,840 of health care expenses includes the \$406 per month. Angeletti assumed health care expenses would increase 5% per year. He used a 3% assumed inflation rate and a 2% social security inflation rate.

¶ 56 Angeletti calculated that, even considering all of Jaclyn's expenses and legal fees, her assets should appreciate by more than \$14,000. In year two (*i.e.*, age 63), her assets should appreciate by \$44,000.

¶ 57 Angeletti estimated that Jaclyn's home is worth \$273,067. He obtained this figure from Zillow.com and does not know if it is accurate. It does not appear in Jaclyn's affidavit. Angeletti does not know if her home has been appraised or its purchase price.

¶ 58 B. Trial Court's August 5, 2016, Findings

¶ 59 The trial court issued its findings on August 5, 2016, granting Jaclyn's petition and denying Michael's petition. The court ordered Michael to pay Jaclyn \$5,180 in monthly maintenance, retroactive to December 1, 2015, for a period of eight years and six months (*i.e.*,

June 1, 2024, or 102 months). The court also denied Jaclyn's petition for contribution of attorney fees.

¶ 60 The trial court noted that maintenance review does not require the moving party to prove a substantial change in circumstances, but that the court must consider the factors set forth in sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a), 510(a-5) (West 2016). Reviewing the factors, the court found as follows.

¶ 61 Jaclyn is currently unemployed, receives no unemployment compensation, and has a pending disability claim. Disability benefits would equal \$1,075 per month. Jaclyn's early retirement social security monthly benefit would be \$818, with full retirement benefits at age 66 equaling \$1,121 and, at age 70, \$1,516. Other than maintenance, Jaclyn's monthly income, the court found, is \$356 in dividend income. She owns a residence with a \$135,644 mortgage balance. The only evidence of value, the court noted, was Angeletti's testimony concerning the Zillow estimate of \$269,423 as of June 1, 2016. Jaclyn has checking accounts (\$64,000) and retirement accounts (\$553,000). The court found that Jaclyn's debts consisted of: the aforementioned mortgage; \$52,383.70 (legal fees); \$4,381.45 (owed to Newman); \$2,700 (owed to Vertino); and \$11,711.25 (owed to the Baird firm).

¶ 62 As to Michael, the trial court found that he is a managing partner with BDO, earning \$380,000 per year, and he earned an additional \$20,000 in commissions with an arrangement with Lincoln Financial, totaling \$400,000. He owns his residence (\$625,000 value with a \$482,700 mortgage). Michael has \$8,400 in savings/checking accounts, \$432,000 in IRA/401(k) accounts, \$6,600 in stocks, \$271,000 in the value of his interest in his sale of SS&G, and \$21,000 in net equity interest in BDO. His debts include: \$22,000 (child's student loan; 529 plan

has a \$6,000 value); \$7,800 (credit cards); \$10,100 (real estate taxes); \$14,800 (401(k) contribution obligation); and \$8,300 (attorney fees).

¶ 63 Next, the court addressed Jaclyn's needs, finding that her financial affidavit was a "credible reflection of her current needs other than some repetition of some medical and dental expenses." Her needs totaled \$5,000 per month. As to Michael, the court found that his needs are substantially higher, but with his obligation to support his adult children ending, his increased income, and sharing some living expenses with his current wife, he has more than enough financial resources and income to meet his needs.

¶ 64 Jaclyn's "realistic and present" income, the court found, consisted of her right to claim an early social security benefit of \$818 (or a disability claim of \$1,075); \$356 in monthly dividend income; and her earnings from employment. The trial court discounted as unpersuasive Vertino's testimony that Jaclyn suffers from PTSD and ADD and that, although she was not disabled, she was unemployable. The court noted that Vertino met Jaclyn only once, she was employed for 11 months after his interview, and "other inconsistencies." However, "[w]ith that said," the court found that Jaclyn does suffer from several ailments and receives treatment from a psychiatrist (and takes medication) for ADD and anxiety. The most she had earned since 1990 was \$14,855 per year. The court found that, based upon her work history and her testimony concerning her health, Jaclyn's ability to earn income would never be more than what she would receive if she qualified for disability "or \$1,075."³

³ Elsewhere, the court re-stated this finding, as follows: "The Court finds [Jaclyn's] ability to earn income would never be more than what she would receive if she were to qualify for disability (\$1,075)."

¶ 65 As to Michael, the court determined that he earns \$400,000 per year and should continue to earn about the same amount until his mandatory retirement date of June 30, 2024. Even at that time, however, he can continue to work in a consulting arrangement. The court further found that Michael is in good health and “at the height of his career.”

¶ 66 Jaclyn, the court found, is 62 years old, has a high school degree with a few college credits, a two-year cosmetology degree, and is treated for ADD and anxiety. Considering her age, education, work history, and health, there is no amount of time whereby she could acquire appropriate education, training, and employment to support herself.

¶ 67 No evidence was presented concerning the standard of living during the marriage. The court took the \$75,000 maintenance amount set in the dissolution judgment as the amount necessary to maintain the standard of living during the marriage.

¶ 68 The court noted that it considered that Jaclyn is eligible to receive an \$818-per-month early social security benefit (or \$1,121 per month if she waited until age 66). It also noted that it considered the possibility that she may receive a disability benefit of about \$1,075. It also noted Angeletti’s testimony and documentary evidence concerning the potential net dividend income of about \$1,500 per month. The trial court found that Jaclyn’s unemployment was not in bad faith and that her testimony concerning her job search was credible. The court determined that the tax consequences to Jaclyn of receiving maintenance were about 17% (*i.e.*, maintenance is taxable to Jaclyn).

¶ 69 The trial court determined that Jaclyn’s 2008 wage income was \$8,695, her 2012 income was \$6,999 (plus \$2,440 in dividends), and her 2015 income was \$12,043 (plus \$4,270 in dividends). She is currently unemployed and earning \$348 in dividend income.

¶ 70 The court found that maintenance was appropriate and that, to meet her monthly needs and to maintain the standard of living established by the dissolution judgment, Jaclyn's net monthly income should be \$5,800. Subtracting her investment income of about \$1,500 per month yields \$4,300 per month in needed income. Michael's maintenance obligation, the court calculated, *factoring in Jaclyn's 17% tax rate*, should be \$5,180 per month (\$5,180 minus 17% = \$4,300). The court noted that it had considered the potential of employment or disability, but, without approval of disability benefits or the prospect of employment income, the court "did not factor or impu[te] any income." As to the \$818 social security benefits, the court noted it is a premature election of a benefit that will have negative long-term impact on Jaclyn's income and, therefore, the court "did not impu[te] this amount in its findings."

¶ 71 C. Michael's Motion to Reconsider and Jaclyn's Motion to Clarify

¶ 72 Michael moved to reconsider (735 ILCS 5/2-1203(a) (West 2016)), asserting that the trial court's August 5, 2016, order contained mathematical errors and computations that were not consistent with the record. Specifically, he argued that the court: (1) miscalculated Jaclyn's necessary net income/reasonable needs to pay her living expenses, where her affidavit states that all of her current living expenses total \$5,036, not the \$5,800 the court found was her monthly need, and where the existing \$75,000 maintenance award, *reduced* by 17% for taxes, would result in \$5,187 per month, not \$5,800; (2) miscalculated Jaclyn's investment income at \$1,500 per month (\$18,000 per year), where the correct figure should be \$2,528 per month (\$621,553 in assets in 2016 x 5.88% return, *reduced* by 17% for taxes); (3) failed to impute any employment or disability income, even though it found that Jaclyn's earning ability will never be more than any disability benefit "or \$1,075"; and (4) should have included Jaclyn's social security income in its calculations (either the \$818 early-retirement benefit or the \$1,121 full-retirement benefit).

¶ 73 Jaclyn's answer to Michael's motion did not challenge the motion as being insufficient under section 2-1203 of the Code. Rather, she disagreed with his calculations; argued that she could not be forced to take early retirement benefits; argued that she was entitled to \$84,000 per year in maintenance (*i.e.*, 21% of \$400,000); noted that she reinvests her earnings; and noted that her disability benefit application had been denied.

¶ 74 Jaclyn moved to clarify the August 5, 2016, order, noting that: (1) the trial court made three different findings as to her dividend income (\$356, \$348, and \$1,500) in its order, and that the order was silent as to whether or not Michael should pay an additional amount in the event Jaclyn receives minimal dividend income; (2) the order is silent as to whether Michael should pay an additional \$1,075 if Jaclyn is denied a disability benefit; (3) the order is silent as to whether her maintenance award includes a cost of living increase since 2008 or 2012, and she argued for a \$84,000-per-year (or \$7,000 per month) maintenance award (Michael's \$400,000 current income x 21%); and (4) an \$84,000 award, she further argued, would account for the aforementioned disability and dividend-income amounts.

¶ 75 On September 27, 2016, the Social Security Administration denied Jaclyn's disability claim, finding that she is not disabled and has the ability to do light work. The letter also stated that, based on her description of a cosmetics-salesperson job, the agency found that Jaclyn is still able to do this type of work.

¶ 76 D. Trial Court's October 24, 2016, Findings

¶ 77 On October 24, 2016, the trial court granted Michael's motion to reconsider, finding that: (1) Jaclyn's monthly living expenses are \$5,187.50 (versus the \$5,800 needed net monthly income in the first order and the \$5,100 Michael proposed in his motion); (2) her net monthly return/income from investments is \$2,528 (versus \$356, \$348, and \$1,500 in August order and

adopting Michael’s suggestion in his motion); (3) her net monthly earnings from employment or alternatively from disability is \$892 (versus zero earnings in August order and adopting Michael’s suggestion); (4) thus, her net monthly shortfall is \$1,767.50 (versus \$1,680 in August order and versus \$1,680 proposed by Michael); (5) applying a 17% tax rate to the shortfall results in a revised monthly maintenance payment of \$2,129.50 (versus \$5,180 in the August order and versus the \$2,025 Michael proposed), which the court found was Michael’s maintenance obligation retroactive to December 1, 2015 for a period of eight years and six months (June 1, 2024); and (6) when Jaclyn turns age 66, she will be eligible for a \$1,121 monthly social security benefit and, at this time, Michael’s maintenance payment shall be reduced to \$1,008.50 per month (\$2,129.50 minus \$1,121). The court denied Jaclyn’s motion to clarify. Jaclyn appeals.

¶ 78

II. ANALYSIS

¶ 79 Jaclyn argues that the trial court erred in granting Michael’s motion to reconsider. She requests that we “reinstate” the August 5, 2016, findings.

¶ 80

A. *Foutch*

¶ 81 First, Jaclyn addresses the lack of a transcript from the hearing on Michael’s motion to reconsider. Jaclyn argues that this court should *not* engage in any presumptions that the trial court’s October 24, 2016, order conformed with the law or had evidentiary support. We agree.

¶ 82 In any appeal:

“an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the

incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

In *Foutch*, the supreme court held that there was no basis to find that the trial court abused its discretion in denying a motion to vacate a judgment order, where there was no transcript of the hearing on the motion. *Id.* at 392. The court noted that no report of proceedings was filed, nor was there a bystander’s report or an agreed statement of facts. *Id.* The record consisted of the pleadings, including an answer that the defendant filed that merely denied some allegations and admitted others, along with the judgment order and the order denying the motion to vacate. Further, the court’s order denying the motion to vacate stated that the parties’ counsel was present and that the court “ ‘heard evidence,’ ” in addition to arguments of counsel. *Id.* at 393. The *Foutch* court noted that there is a presumption that denial of the motion conformed with the law and was properly supported by the evidence. *Id.* at 394. “Where it is alleged that the evidence presented was actually insufficient to support the court’s finding, the burden of preserving said evidence rests with the party who appeals from said order.” *Id.* at 394.

¶ 83 In *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625-26 (1985), upon which Jaclyn relies, the court found *Foutch* inapposite and held that the failure to include a transcript did *not* preclude appellate review. The *Walker* defendant appealed from the denial of its motion to transfer for *forum non conveniens*, and there was no transcript from the hearing on the motion. The *Walker* court noted that the standard of review was an abuse of discretion. *Id.* at 624. It distinguished *Foutch* because, in *Walker*, the record contained all of the relevant facts presented. The *Walker* court further noted that the trial court “could only have based its ruling on the pleadings and affidavits ***”, thus rendering the transcript nothing more than a memorialization of the arguments of the attorneys.” *Id.* at 625. The court noted that the trial court’s order did not

recite that “ ‘evidence was heard.’ ” Rather, it stated that the court had read the briefs, heard arguments of counsel, “which are not evidence and a transcript of which is not necessary to this appeal, and was fully advised of the premises.” *Id.* The defendant’s motion also contained an affidavit that was included in the record. *Id.* The *Walker* court stated that the fact that the trial court may have stated in open court the reasons for its ruling did not warrant requiring a transcript, where “the record contains everything that was presented to the judge in support of or in opposition to the motion.” *Id.* at 626. The record on appeal included the briefs, affidavit and memoranda filed, “thus obviating the need for this court to resort to specific argument made by counsel at the hearing.” *Id.*

¶ 84 Michael asserts that what was presented to the court by way of argument when the motion was heard is not capable of irrefutable presumptions that the court heard nothing else and did not express its rationale. He urges that *Foutch* applies, and he cites to *Victor Township Drainage District v. Lundeen Family Farm Partnership*, 2014 IL App (2d) 140009. We reject Michael’s arguments. *Victor Township* is distinguishable because the record in that case was incomplete. *Id.* ¶36. The defendants argued that the trial court erred in granting the plaintiff’s motion for a new trial. They did not include transcripts or bystander’s reports of the original bench trial or of the hearing on the motion for a new trial, except for an excerpt from the latter hearing that included only the trial court’s final ruling. This court, invoking *Foutch*, held that it would presume that the trial court’s granting of a new trial was supported by the facts presented during the original proceedings and did not constitute an abuse of discretion, because the motion for a new trial and the brief in support of it included arguments that *were based on the evidence presented*, which was not included in the record. *Id.* ¶ 36.

¶ 85 Here, in its October 24, 2016, order, the trial court did not state that evidence was heard at the hearing on Michael’s motion to reconsider. Specifically, it noted that “counsel for the parties being present, and the Court having heard the argument of counsel, having considered the pleadings filed and the case law presented and being duly advised in the premises[.]” The court did not state in its prefatory paragraph, as it did in its August 5, 2016, order that, “having conducted a hearing *** and the Court *having heard and reviewed the evidence in the form of testimony of the parties, other witnesses, admitted exhibits and stipulations and this Court’s [prior] Orders* *** on the issues of the review and termination of maintenance, the Court considering the arguments of respective counsel, finds as follows[.]” (Emphasis added.) We can only infer that *no* evidence was presented at the hearing on Michael’s motion to reconsider and Jaclyn’s motion to clarify and that the court made its determination solely on the pleadings and counsels’ arguments.⁴ Further, we note that Michael’s motion asserted that the trial court had made mathematical errors in its initial findings; he did not raise new evidence. Finally, we note that the trial court’s October 24, 2016, findings adopt, and are nearly identical to, those Michael proposed in his motion to reconsider, reflecting that it essentially adopted the arguments in his motion. Following *Walker*, we review Jaclyn’s claims as to the propriety of the October 24, 2016, order.

¶ 86 **B. Standard of Review**

¶ 87 Next, the parties disagree over the proper standard of review. Again, in this appeal, Jaclyn seeks review of the trial court’s ruling on Michael’s motion to reconsider. She maintains

⁴ Jaclyn had attached documentation to *her* motion, reflecting the fact that her disability claim was denied and that confirmed an assumption the trial court had made in its August order that Jaclyn was not receiving such benefits.

that the trial court should have upheld its original, *i.e.*, August 5, 2016, order and contends that *de novo* review is appropriate because this case requires us to review the trial court's application (or alleged misapplication) in its October 24, 2016, order of existing law, not its resolution of new facts or legal theories that were not presented at the hearing that resulted in the original August order. We agree, but we further conclude that, under either *de novo* or a more deferential standard, our resolution of each issue on appeal would be the same.

¶ 88 The purpose of a motion to reconsider “is to bring to the trial court’s attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.” *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). Generally, a trial court’s decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). However, where the motion was based only on the trial court’s application or purported misapplication of existing law, rather than on new facts or legal theories not presented at trial, a reviewing court reviews *de novo* the trial court’s decision to grant or deny the motion. *Bank of America, N.A. v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (2011).

¶ 89 Jaclyn maintains that Michael’s motion brought forth no new law, facts, or evidence unknown at the time of trial, but consisted entirely of allegations of (mathematical) error by the trial court as to its application of existing law to the facts of the case. Thus, she asserts, *de novo* review is proper to assess whether Michael’s arguments for reconsideration established error by the court or otherwise warranted changes to the August 5, 2016, order.

¶ 90 Michael responds that: it is “debatable” whether *de novo* review applies; regardless of the standard of review, the result is the same; and asserts that we should apply the abuse-of-

discretion standard. On the last point, he notes that the trial court re-examined its factual findings and determined that they were initially incorrect, that is, its ultimate order set maintenance based on what the court determined the facts to be as presented at trial.

¶ 91 We agree with Jaclyn that *de novo* review is appropriate here. Michael attempts to re-characterize the court’s findings and urges us to apply the standard of review we would utilize if we were reviewing only the court’s initial, *i.e.*, August, order. See *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (reviewing court will not disturb trial court’s decision to modify maintenance upon conducting a review of maintenance absent a clear abuse of discretion); *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005) (the amount of maintenance awarded by the trial court is within its sound discretion, and a reviewing court will not overturn that determination absent an abuse of discretion). However, the focus of this appeal is the ruling on Michael’s motion to reconsider. There is case law instructing that, where, as here, a motion to reconsider is based on the trial court’s application or misapplication of existing law, *de novo* review applies. *Bank of America*, 409 Ill. App. 3d at 709. However, we acknowledge that some Second District case law limits *de novo* review to situations involving only the trial court’s determination of legal issues. See, *e.g.*, *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008) (“where a motion to reconsider raises a question of whether the trial court erred in its previous application of existing law, we review *de novo* the trial court’s determinations of legal issues”). Here, we conclude that our resolution of each issue would be same regardless of which standard of review applies.

¶ 92 C. Statutory and Case-Law Background

¶ 93 Where a marital settlement agreement provides for unallocated maintenance and support that is “reviewable” after a period of years, the parties have agreed to a general review of

maintenance. *Blum*, 235 Ill. 2d at 35. A general review of maintenance does not require the moving party to prove a substantial change in circumstances. *Id.* at 35-36. Instead, the trial court considers the factors set forth in sections 504(a) and 510(a-5) of the Act and determines whether “to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms.” *Id.* at 36. See also *In re Marriage of Kocher*, 282 Ill. App. 3d 655, 661 (1996) (when deciding whether to modify or terminate maintenance, the trial court should consider the same factors it considered when it made the initial maintenance award).

¶ 94 Section 504(a) of the Act provides that a court, in determining whether a maintenance award is appropriate, consider all relevant factors, including:

- “(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
- (2) the needs of each party;
- (3) the realistic present and future earning capacity of each party;
- (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
- (5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;
- (6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or

herself through appropriate employment or any parental responsibility arrangements and its effect on the party seeking employment;

(7) the standard of living established during the marriage;

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

(11) the tax consequences of the property division upon the respective economic circumstances of the parties;

(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a) (West 2016).

¶ 95 When determining whether to modify a maintenance award, courts consider the following factors in addition to the factors listed in section 504(a) above:

“(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

- (4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;
- (5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;
- (6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;
- (7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;
- (8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and
- (9) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/510(a-5) (West 2016).

¶ 96 In its initial (August) order, the trial court made extensive findings on these factors, which we summarized above.

¶ 97 **D. Reasonable Needs**

¶ 98 Turning to the merits, Jaclyn argues first that the trial court erred in finding on reconsideration that Jaclyn's reasonable monthly needs equal \$5,187.50 per month. She contends that the court's finding of \$5,800 per month in its August order was reasonable and that there was no error in the application of the law; thus, it should be reinstated. We agree.

¶ 99 In the August order, the trial court found that Jaclyn's needs, as credibly set forth in her financial affidavit, were \$5,000 per month, but, to maintain the standard of living established

during the marriage, Jaclyn's net monthly income should be \$5,800 per month. (The court thereafter subtracted \$1,500 in investment income from \$5,800 to arrive at \$4,300. It found that Michael should pay \$5,180 in monthly maintenance, because, after reducing this figure by the 17% tax liability to Jaclyn of the maintenance payment, one arrives at \$4,300.)

¶ 100 In his motion to reconsider, Michael argued first that the court miscalculated Jaclyn's necessary income, where her affidavit stated that all of her current living expenses total \$5,036, not the \$5,800 the court found was her monthly need, and, alternatively, where the initial \$75,000 maintenance award, *reduced* by 17% for taxes, would result in \$5,187.50 per month, not \$5,800. According to Michael, under either analysis, Jaclyn's total expenses or, alternatively, the standard of living at the time of the divorce, reflected that Jaclyn needs were about \$5,100 per month, not \$5,800. The trial court, on reconsideration, adopted Michael's alternative calculation, finding that Jaclyn's monthly living expenses are \$5,187.50.

¶ 101 On appeal, Jaclyn argues that the court's initial finding of \$5,800 was reasonable and that Michael did not show in his motion to reconsider any error in the court's application of the law. She points out that the court is not required to set maintenance at an amount that exactly equals Jaclyn's current needs, but should seek to enable her to maintain the standard of living enjoyed during the marriage. See *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972 (1992) (the "benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance *in view of the standard of living* established during the marriage"). (Emphasis added.) Jaclyn also argues that the trial court failed to consider all of the relevant facts and, in adopting Michael's alternative calculation, "blindly" accepted the premise that the maintenance amount Jaclyn received under the *original* dissolution judgment was an appropriate gauge of her

present reasonable needs or was otherwise representative of Jaclyn's standard of living enjoyed during the marriage.

¶ 102 According to Jaclyn, at the time of dissolution, she had an approximate net cash flow from all sources of \$5,879, which consisted of \$5,187 in net maintenance (*i.e.*, \$5,800 reduced by 17%) *plus* \$692 in net employment income (*i.e.*, \$10,000 in annual earnings, which equaled \$833 per month; \$833 reduced by 17% = \$692), the latter of which she no longer earns. She also notes that the timing of the maintenance-review period coincided with the children's completion of their college educations, and that, in the August order, the trial court acknowledged that Michael no longer supports their children, thus reducing his financial obligations. The trial court set her reasonable needs in the August order at \$5,800, which she urges was reasonable and should be reinstated due to Michael's failure to show on reconsideration error in the application of the law and his failure to acknowledge all of the relevant facts.

¶ 103 Michael responds that he pointed out to the court in his motion to reconsider that the court had erroneously assumed that the \$75,000 maintenance award in the original dissolution judgment netted Jaclyn \$5,800 per month. By Michael's calculation, which the trial court adopted on reconsideration, Jaclyn actually netted \$5,187.50 ($\$75,000/12 = \$6,250$; $\$6,250$ reduced by 17% = \$5,187.50) at dissolution. In 2011, the court modified the maintenance award to \$5,000 (and set it at 21% of Michael's gross annual income). Since dissolution, Michael notes, Jaclyn's assets have substantially increased (from \$406,980 to \$725,699), she is capable of working, and she is eligible for \$818 per month in early social security retirement benefits. He argues that Jaclyn as not made reasonable efforts at being self-supporting, and her unemployed status is not due to her inability to work (pointing to the denial of unemployment compensation

and disability benefits). Michael contends that he should not be required to provide maintenance until Jaclyn reaches age 92.

¶ 104 We conclude that, on reconsideration, the trial court erred in reducing its finding of Jaclyn's needs. We agree with Jaclyn that her net income at the time of the dissolution judgment was closer to \$5,800 per month, which is inclusive of maintenance *and* earnings at that time. Michael ignores this aspect of the calculation, and, in addressing earnings at all, argues that Jaclyn is able to work and that such income must be imputed in determining her needs. We disagree. In its August findings, the trial court reasonably found that Jaclyn's unemployment was not in bad faith and found credible her testimony concerning her unsuccessful job search efforts. Nowhere in its reconsideration order did the court alter these findings. It also did not alter its earlier decision that, without approval of disability benefits or the prospect of employment income, it would not impute any income from those sources. On reconsideration, the court adopted Michael's alternative argument that the original dissolution award netted Jaclyn \$5,187 per month in maintenance. This ignored the fact, as Jaclyn points out, that she also earned income at that time. Although she may theoretically now be able to work to some degree, she has been unsuccessful in finding work and her prospects for doing so, as the court found in August, were not good. She is 62 years old and has health issues. Further, we note that the trial court found in the August order that Michael earns \$400,000 per year (from BDO and Lincoln). Twenty-one percent of this amount is \$84,000 per year, \$7,000 per month, or \$5,810 after taxes. Finally, as to Michael's point that he should not have to pay maintenance until Jaclyn reaches age 92, we note that, on reconsideration, the trial court ordered that Michael pay maintenance until only 2024, a finding that Jaclyn does not challenge on appeal.

¶ 105 In sum, the court's findings on reconsideration concerning Jaclyn's reasonable needs were erroneous. We instate the August finding of \$5,800 in monthly need.

¶ 106 E. Investment Income

¶ 107 Next, Jaclyn argues that the trial court erred in finding on reconsideration that her investment income is \$2,500 rather than the \$1,500 it found in its August order. She maintains that the reconsideration finding was unsupported by the evidence and contrary to the court's prior factual findings. Jaclyn also argues that Michael presented the issue as a mathematical error that resulted in a windfall for Jaclyn, but he supported his argument with only a portion of the evidence, specifically, Angeletti's report. We conclude that the trial court committed error on reconsideration.

¶ 108 Michael argued in his motion to reconsider that the trial court had miscalculated Jaclyn's investment income at \$1,500 per month (\$18,000 per year), where the correct figure should be \$2,528 per month (\$621,553 in assets in 2016 x 5.88% return, *reduced* by 17% for taxes), or \$30,336 per year.

¶ 109 Jaclyn points to the August finding that her investments were valued at \$553,000 and notes that Michael did not call this figure into question, but merely ignored it. She also maintains that he ignored the court's acknowledgement that Jaclyn has substantial outstanding debts (primarily \$52,383 in attorney fees, but also \$4,381 owed to Belmonte, \$2,700 owed to Vertino, and \$11,711 owed to the Baird firm) and points out that these amounts are substantially higher than the estimated \$15,000 legal-fee debt Angeletti, her own expert, used in his projections. Angeletti identified investment principal as the source of the funds to pay these debts, and, she notes, Michael offered no evidence to the contrary. She contends that, after these debts are subtracted from her investment balance, she is left with \$481,825. Jaclyn also notes

that she would need to invade principal to pay for upcoming dental expenses of \$14,632, which reduces her investment balance to \$467,193. By her calculation, applying a 5.88% rate of return and a 17% income tax rate yields \$1,900 in monthly investment income: $\$467,193 \times 5.88\% = \$27,471$; $\$27,471$ minus 17% = $\$22,801$; $\$22,801/12 = \$1,900$. Addressing the fact that the trial court found, in August, that her investment income was \$1,500, not \$1,900, Jaclyn contends that she will likely need to prematurely invade her investment principal considering her age, health conditions, and the end of the COBRA period two years before she will be eligible for Medicare, thereby further reducing her investment balance and the earnings thereon.

¶ 110 Michael responds that he noted to the court that Angeletti testified that Jaclyn's investment income would be \$36,547 per year. He suggested to the court that this amount be reduced by 17% tax rate, which the court adopted: $\$36,547/12 = \$3,045.58$; $\$3,045.58$ minus 17% = $\$2,528$. He urges that there was no error in the findings on reconsideration.

¶ 111 We conclude that the trial court erred in assessing this issue on reconsideration. The court found (in August) that Jaclyn's assets equaled \$617,000 (comprised of \$64,000 in checking accounts and \$553,000 in retirement accounts). Angeletti used \$621,553 for Jaclyn's assets in his calculations for the year 2016, which is essentially the same total as the trial court's August figure (but differing because he received additional data after Jaclyn completed her financial affidavit). He estimated Jaclyn's investment earnings to be \$35,414 in 2016 and explained that the equation is more complicated than merely taking 5.88% of \$621,553 (which would equal \$36,547, the figure Michael used and that the trial court adopted). As to the issue of the expenses Jaclyn points to for legal, medical, and financial planning, we again note that Angeletti incorporated only \$15,000 in legal fees in making his projections. The court's findings on reconsideration did not address why it did not revise Angeletti's estimates to include these

expenses. In its August order, the court had included these debts. Further, Michael offers no argument on appeal that these findings were *implicitly* rejected on reconsideration. Again, they were not addressed at all in the court's October reconsideration order. We are left with no option but to conclude that the trial court erred in failing to factor these expenses into its findings on reconsideration. Accordingly, we reinstate the August finding that Jaclyn's investment income is \$1,500.

¶ 112

F. Imputed Income

¶ 113 Next, Jaclyn argues that the trial court erred on reconsideration in imputing \$892 (\$1,075 in disability income minus 17%) of net monthly income or social security earnings, where this finding directly conflicts with its initial findings and includes income that is not available to her. She notes that Michael's argument relied on the court's initial finding that, based on her history, Jaclyn would never be able to earn more than if she were to qualify for disability, or \$1,075. Michael argued in his motion to reconsider that the court's finding was that Jaclyn would *either* earn \$1,075 from employment *or* \$1,075 from disability benefits, but not both or neither. Jaclyn contends that the court erred in adopting this argument because it conflicts with other findings it made in the initial order that clarified the \$1,075 finding upon which Michael relied. Specifically, she points to the court's (initial) findings that: Jaclyn's testimony concerning her inability to find employment was credible; "her ability to earn income would never be more than what she would receive if she were to qualify for disability (\$1,075)"; and that, without disability benefits, "or the prospect of employment income[,] this Court did not factor or impu[te] any income [to Jaclyn]." Jaclyn contends that the court did not retract any of these findings on reconsideration and notes that she had informed the court that her application for disability benefits had been denied. She maintains that this evidence should have bolstered the trial court's

original decision to refrain from imputing disability income to her and argues that there was no basis for the court to grant Michael's request for reconsideration.

¶ 114 Michael responds that Jaclyn's own conduct resulted in her losing her job; she did not qualify for disability benefits, and she can accept early social security payments without penalty because she would not reach the \$16,920 income threshold for a government clawback. He maintains that it was appropriate for the court to reconsider its initial exclusion of imputed income because Michael "does not have a duty to function as either unemployment compensation or as a provider of social security payments." Jaclyn, he argues, should not be allowed to claim that she should wait until age 66 to collect social security when she is the person responsible for her own unemployment. Further, Michael suggests that, if Jaclyn chooses to receive social security rather than find employment, she can seek modification at a later proceeding "and attempt to convince the court then that was her only or best alternative."

¶ 115 We agree with Jaclyn that the trial court erred on reconsideration in imputing the disability-income figure. The August order clearly did not reflect that the court found that Jaclyn's prospects were good for finding employment. The court found the opposite. In his motion to reconsider, Michael relied on one finding the court made that was, frankly, not clearly written. Elsewhere in its August order, the court very clearly found, again, that Jaclyn's prospects for finding employment were not good, based in part on finding her testimony credible about her job search efforts. Thus, given the finding that Jaclyn was unlikely to find work and the fact that her disability benefit application was denied, there was no basis upon which the court, on reconsideration, could impute disability or employment income without clear additional findings refuting its earlier findings concerning Jaclyn's employment prospects. In other words, the October order cannot be reconciled with the August findings that were left unchanged.

Further, as to Michael's point that Jaclyn can take early social security benefits and earn some income at the same time without losing those benefits, we note that he fails to acknowledge the financial penalty (over \$200,000, according to Angeletti, over Jaclyn's life expectancy) of taking early social security benefits. In sum, we conclude that the trial court erred in imputing \$892 in net monthly earnings from employment or disability.

¶ 116

G. Summary

¶ 117 In summary, we hold that Jaclyn's reasonable needs are \$5,800 per month and that her monthly return on investment is \$1,500. This leaves a shortfall of \$4,300 per month. Applying a 17% tax rate yields a monthly maintenance payment of \$5,180. We leave unchanged the trial court's finding on reconsideration that Michael pay this new amount retroactive to December 1, 2015 for a period of eight years and six months (June 1, 2024 or 102 months). We also leave unchanged (which Jaclyn concedes given our resolution in her favor of the imputed-income issue) the court's findings on reconsideration that, when Jaclyn becomes eligible for \$1,121 in monthly social security benefits at age 66, Michael's maintenance payment shall be reduced by that amount, with the new payment equaling \$4,059 (*i.e.*, \$5,180 - \$1,121 = \$4,059).

¶ 118

III. CONCLUSION

¶ 119 For the reasons stated, the judgment of the circuit court of Lake County is affirmed in part and reversed in part.

¶ 120 Affirmed in part and reversed in part.