

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:)

HEATHER L. MACFARLAND,)

Petitioner,)

and)

GLEN P. BELVIS,)

Respondent.)

No. 13 D 6026

Associate Judge
Naomi H. Schuster
JAN 19 2018
Circuit Court - 1966

DECISION AND ORDER

4568
4507
45112

This cause coming on to be heard on the Petition for Review and Extension of Maintenance filed by the Petitioner, **Heather L. MacFarland** ("Heather"), by and through her attorneys, Grund & Leavitt, P.C ON AUGUST 17, 2016. The Respondent, **Glen P. Belvis** ("Glen"), by and through his attorney, William P. White III Ltd, filed his Response to Petition for Review and Extension of Maintenance on November 14, 2016. Heather filed her Reply to Response to Petition for Review and Extension of Maintenance on January 23, 2017. The trial commenced on February 1, 2017. The matter continued on February 2, 2017, February 6, 2017, February 10, 2017, February 22, 2017, March 13, 2017, April 17, 2017, May 22, 2017 and concluded on July 7, 2017. During the trial, the court heard the testimony of Heather and Glen and admitted numerous exhibits in evidence. On August 28, 2017, Heather submitted her written closing brief and proposed order and Glen submitted his closing argument on September 5, 2017. The matter was taken under advisement by the court and hereby renders its decision and order.

BACKGROUND

Procedural History

Heather and Glen (jointly referred to as "the parties"), were lawfully married on November 5, 1990. Three children were born to the parties as a result of the marriage, namely: Lindsey, Joshua and Nicholas, all of whom are now emancipated.

On July 25, 2014, after a marriage of approximately 24 years, a Judgment of Dissolution of Marriage ("Judgment") was entered and incorporated the parties' Marital Settlement Agreement ("MSA"). Paragraph 5 of the MSA provides, in pertinent part, as follows:

UNALLOCATED FAMILY SUPPORT: GLEN shall pay directly to HEATHER on the first day of each month as unallocated family support in accordance with the following schedule:

- A. \$14,000 per month on June 1, 2014 and July 1, 2014.
- B. \$12,500 per month on August 1, 2014 through December 1, 2015.
- C. \$10,000 per month on January 1, 2016 through December 1, 2016.

Said payments are non-modifiable through December 31, 2016, at which time the support payments shall be reviewed upon a petition brought by HEATHER on or before December 31, 2016.

Testimony of Heather

Heather is 49 years of age. None of the parties' children presently reside with Heather and she does not contribute to their support. At the time of the divorce, Heather was awarded the marital home in Naperville of approximately 4,000 square feet. The property was sold in December, 2014 and Heather retained the proceeds from the sale of approximately \$65,000.00 (ROP, p. 26). Heather and the then minor child, Nicholas, moved to a rental property in Chicago for \$2,300.00 per month plus parking fees. By August 2015, Heather had moved again by herself to a rental apartment in Evanston for approximately \$2,300.00 per month. By April, 2016 Heather moved to her current residence in Chicago for \$1,850.00 per month plus parking for a studio apartment (ROP, p. 36-37)

Heather graduated from North Central College with a bachelor of arts in business communications in 1999 and a MBA in international finance in 2003. (ROP p. 40-41) On cross examination, Heather testified that there were certain breaks in her education commencing in 1990. (ROP

p. 298-304) After Heather obtained her MBA, she did not seek any full-time positions as she was "volunteering at that time". (ROP p. 332) In addition to a broker's license obtained in 2013, Heather became a certified negotiation expert in June 2015 from the Negotiation Institute and a real estate divorce specialist in 2016 from the Real Estate Divorce Institute. Besides working as a waitress prior to the birth of the party's first child, Heather had a doula business in 1997 but did not earn any income acting as a doula. (ROP p. 46) After approximately a year earning minimum wage for part time work at "Little Friends", Heather obtained a salesperson license in 2007 but only worked in the industry for about six months but did not earn any money. (ROP p. 346) (See Heather Exhibit 27) Heather testified that she did not seek other employment between 2007 and 2013. (ROP p. 347) In 2010, Heather purchased a 40% interest in Design Your Own Draperies for \$13,000.00. Heather's annual earnings from Design Your Own Draperies never exceeded \$4,000.00. (ROP p. 57) Heather is currently and has been for the last year a broker for @properties office in Lincoln Park. Heather retains 60% of any commissions earned. Heather testified that she earned a referral fee for the sale of her Naperville home but no other commissions in 2014. In 2015, Heather earned "around \$6,000 something" (ROP p. 69). Income earned from employment in 2016 by Heather was \$14,282.47 (ROP p. 77) Heather testified that since 2016 she has developed a website and incurred expenses associated with the development and maintenance of the site (ROP p. 99-106) In addition, Heather maintains a blog, twitter, Facebook and LinkedIn accounts. (Heather Ex. 31) This did not occur until 2016 as Heather did not maintain these activities when she was with Berkshire Hathaway or Coldwell Banker (ROP pgs. 528-530)

Heather also testified that in 2014 she liquidated an IRA she received from the divorce in the amount of \$145,934.00 to pay off past debts. (ROP p. 73) However, according to Heather's January 24, 2017 financial affidavit, she continues to have a total monthly debt payment of \$5,699.03 on a total debt obligation of \$156,356.65 exclusive of attorney fees and additional medical bills. (Heather Ex 15) The court admitted by stipulation numerous financial/tax records which were subject to a protective order.

Since the divorce, Heather has been diagnosed with certain medical conditions, some of which were symptomatic during the marriage. The conditions resulted in medication, surgical interventions and

termination of certain activities including yoga and running and the commencement of physical therapy. Since the divorce, Heather has been insured with 3 different providers with a difference in premiums and out of pocket expenses with a current cap on out of pocket of \$3,300.00 per year. Numerous medical/treatment records were admitted by stipulation subject to a HIPPA protective order. On cross examination, Heather testified that some conditions she experienced did not inhibit her from gaining employment since the judgment was entered. (ROP p. 265-269) Heather confirmed that she did not earn any income as a broker in 2014 except the referral fee for the sale of her Naperville residence of approximately \$14,000.00. (ROP p. 272-273) In 2015, Heather had one closing earning approximately \$6,000. (ROP p. 275) In 2016, Heather earned income on 2 transactions of approximately \$16,500.00. (ROP p. 277-278) At the time of the initial cross-examination, Heather did not have any clients. (ROP pgs. 278-280). Heather did testify that she hopes to make \$50,000.00 in 2017 (ROP pg. 702)

During the marriage, Heather testified that the parties owned high end vehicles, owned 2 horses and traveled on vacation. (ROP p. 182-184) On cross examination, Heather advised the court that she borrowed money from her mother (Florence Kellogg) from time to time in 2013 and has repaid her mother \$22,000.00 (ROP p. 367) Heather later testified that the amount of the loans from her mother totaled \$35,000.00 in 2015 (ROP p. 408) The initial loan was in April or May, 2013 for attorney fees but Heather did not reflect the loan in her Disclosure Statement (Heather Ex. 16) or in her Answers to Interrogatories. (ROP p. 382) Heather testified that at times Ms. Kellogg assisted with household expenses, paid the credit card company directly and cared for the family dog and Florence incurred expenses in connection with the family dog living with Florence. Florence also helped Heather buy her son, Nick, a car but stated that she never had an agreement with Mr. Belvis to buy Nick a car. (ROP, p. 828) The pet related expenses do not appear on Heather's financial affidavits. (ROP p. 405) On further cross examination, Heather testified that she paid her mother the sum of \$35,000.00 on November 4, 2014 to repay her mother's loan for attorney fees and credit card payments. (ROP pgs. 424-426) This sum was in addition to the payment by Glen in July 2014 of \$25,000.00 toward credit cards identified on Exhibit 16, the payment of Heather's attorney fees in January 2014 of \$33,750.00 and the payment of \$35,000.00

in July, 2014. The checks written by Heather to her mother totaled \$50,995.00 between 2013 and 2016 as a result of Heather's borrowing from her mother in 2013 and 2014. Heather reviewed certain payments by her mother on her behalf before she filed for temporary maintenance in August, 2013. (Heather Exhibit 95) Heather also received a loan for Design Your Own Draperies for \$10,000.00 in 2014 from her then boyfriend, Neil Egan, and repaid him in full. Heather recalled that the Judgment for Dissolution of Marriage provided that Glen was to pay \$25,000.00 toward Heather's credit card debt. Heather identified approximately \$30,000.00 of debt as of August, 2013 but believes she had more debt at the time of the Judgment due to obtaining 4 or 5 additional credit cards. (ROP pgs. 543-546) Heather continued to incur credit card debt after the entry of the Judgment. On cross examination, Heather acknowledged that in 2013, she had \$30,000.00 in debt and two and one-half years later her debts increased to approximately \$119,000.00. (ROP p. 618) This increase in debt was despite her liquidation of the IRA that was awarded to her under the Judgment for which she received approximately \$145,000. (ROP pgs. 632-635) Heather also stated that the income tax obligations reflected on Exhibit 15 is not currently being paid. (ROP pgs. 654-656)

When testifying about the receipt of funds from an insurance claim as a result of flooding in the Naperville home, Heather gave confusing responses. At first she stated that the insurance company paid "7,500 I think maybe directly to SERVPRO" (ROP, pg. 681). When asked about a deposit to her account in July, 2014, she stated "Yeah, I believe that is where I had to pay SERVPRO out. They were the ones that came in and did the demolition..." (ROP pg. 682). During Heather's testimony, she reviewed a variety of her chronic medical conditions, which have some impact on her daily life—some of which are degenerative and of a serious nature. She suffered a stroke causing a rescheduling of trial dates after trial commenced (March 2017); underwent hand surgery (January 2017) and requires additional hand surgery to repair a ruptured tendon. Although she is presently able to work (with some limitations) between flare-ups of her condition and surgeries, her health problems may continue. Heather testified that she was currently on 7 medications but during the marriage she was not taking medications and that now she is

“functioning way better”. (ROP p. 822) The impact of her medications on her long-term ability to work is unknown.

Due to a medical condition, Heather’s re-cross examination was suspended by agreement and Glen was called as an adverse witness in Heather’s case in chief.

Testimony of Glen:

Glen testified that he is 58 years old (now 59) and that he and Heather married on November 5, 1990 and divorced on July 25, 2014. A graduate of the University of Notre Dame in 1980, Glen graduated first in his class from DePaul law school in 1985 and is a member of the Illinois bar and the patent bar. Glen reviewed his employment and earnings history. Pursuant to the marital settlement agreement, Glen described his obligations for the emancipated children (ROP, p. 893-896). Glen acknowledged that the expenses for the children that he incurs under the categories of allowance, clothing, grooming, cell phones, doctor visits, vacations and gifts may not be mentioned by name in the parties marital settlement agreement but he believes it is his interpretation of his “obligations under the terms room and board and the like” (ROP, p. 906). Glen testified that Heather has not contributed to any of the children’s expenses (ROP p. 929). According to Exhibit 43, Glen had gross income in 2016 of \$528,843.00 and maintained that \$877.00 was available per month after paying maintenance to Heather in the sum of \$10,000.00.

In his case in chief, Glen testified that in 2016 his gross income for Melior was \$400,000.00 and approximately \$260,000.00-280,000.00 from Steptoe. These were his only sources of income. Glen disputes Heather’s allegation that she contributed toward his career. Glen testified that he encouraged Heather to work outside the home and supported her endeavors but there were opportunities that Heather did not pursue. (ROP pgs. 1421-1423)

Glen further testified that he expects July 17, 2017 to be his last day at Steptoe & Johnson. However, he does expect to get his equity back within the next two years. Commencing on July 18, 2017, Glen expects to begin generating billings for his new law firm. (ROP, p. 1441) Glen expects that within 60 days of opening his law firm that his income stream will be back exactly as it was at Steptoe. (ROP, p. 1443) Therefore, Glen did not assert a substantial change in circumstances.

Further examination of Heather:

Heather testified that she and Glen had an oral agreement during the marriage that she would not work full-time. (ROP p.984) Heather explained the increase in her medications since her last court date and reviewed her return to work at @properties in early April, 2017 at which time she did not have any active listings. However, Heather was working with a "buyer-client". Heather continues with an occupational therapist but is unable to schedule a surgery on her fused finger due to her recent medical condition. Heather clarified that originally the \$2,500.00 paid by her mother for a car for Nick was a gift but due to her mother's change in financial circumstances, the gift became a loan which Heather voluntarily repaid to her mother.

Heather was recalled in her case in chief with a limited scope due to facts and circumstances occurring on March 7, 2017. Heather described the events of that morning and her transport by ambulance to the hospital. Heather was hospitalized from March 7th to March 14, 2017 and underwent multiple tests. Pursuant to medical instructions, Heather was restricted from driving, unable to lift more than 5 pounds and directed to reduce exertion levels until April 12, 2017. After April 12, 2017, Heather was cleared to slowly return to normal activity and expects follow up testing. Heather has returned to exercise at the East Bank Club and returned to work, doing open houses, going into the office, doing floor time, showing properties to potential buyers, blogging, website maintenance and contact with past and potential clients. (ROP p. 1137) Heather testified to amounts owed between March 7, 2017 and

May 21, 2017 in the sum of \$7,138.73 for the hospital bill. (Exhibit 170) The insurance claim detail was presented in Exhibit 178.

On subsequent cross examination, Heather testified that she increased her activities at @properties and now has a renter client and potential listing in addition to her buyer client.

Thereafter, Heather was called as an adverse witness in Glen's case in chief. During the marriage, Heather testified that she contributed about 80% of her time as a homemaker but she did use daycare and babysitters and Glen also cared for the children. Heather reviewed that she worked for her drapery business which she owned during the marriage and then received her real estate license in 2013 and joined Berkshire Hathaway. From 2013 to 2016 Heather testified that her hours per week varied but it averaged 30 hours. (ROP p. 1261-1262) Heather described her investment in her real estate website of approximately \$19,000.00 to \$20,900.00 "in that range". (ROP p. 1271-1272) Exhibit 28 is a listing of the checks written from Heather's checking account to Flo or Florence Kellogg from 2014 to 2016 in the sum of \$50,995.00. Heather described her activities during the marriage, including acting as a doula for about a year and working as a real estate salesperson in 2007 or 2008 at Weichert Realty for a couple of months. Heather was also a volunteer for the Naperville United Way in 2005. Heather has her mother's credit card since February 1, 2017 and has used it to pay some of her rent and other expenses in the amount of approximately \$12,300.00. (ROP pgs. 1304-1307, p. 1363) Between February 1, 2017 and July 7, 2017, Heather has not received any income from @properties.

According to the statement that Heather received from the Social Security Administration dated January 16, 2017 (Exhibit 21), she earned the following amounts in the following years:

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1985	405	405
1986	2,297	2,297
1987	3,555	3,555
1988	988	988
1989	602	602
1990	6,445	6,445
1991	204	204
1992	0	0
1993	0	0
1994	0	0
1995	0	0
1996	0	0
1997	0	0
1998	0	0
1999	5,771	5,771
2000	4,261	4,261
2001	4,361	4,361
2002	0	0
2003	0	0
2004	0	0
2005	0	0
2006	0	0
2007	0	0
2008	0	0
2009	0	0
2010	0	0
2011	0	0
2012	0	0
2013	67	67
2014	0	0
2015	0	0

Heather testified that during the marriage, she and Glen enjoyed a comfortable standard of living. They owned luxury cars, including a Mercedes SUV, Audi A4, Yukon Denali, Chevy Suburban, and a convertible BMW. They also owned two horses. They took numerous vacations and pleasure trips, including several trips to Disneyworld, multiple family ski trips, and trips to the Bahamas and Puerto Rico. Heather testified that during the marriage, she had her hair and nails done on a regular basis (ROP, pgs. 799-801) and underwent multiple cosmetic procedures, including getting Botox injections and other fillers, with Glen's support and approval.

Assets awarded to Heather in the Divorce Judgment

Pursuant to Article 12—14 of the parties' MSA, Heather received the following property in the divorce:

- (1) 3623 Shakespeare Lane, Naperville, Illinois (subject to the first mortgage, home equity line of credit, real estate taxes and related expenses)
- (2) All furniture, furnishings, and fixtures in the marital residence.
- (3) All bank account in her individual name.
- (4) All stocks, bonds, and other securities in her individual name.
- (5) All certificates of deposit in her individual name.
- (6) \$155,000 in retirement funds from Glen's Fidelity IRA (subject to ordinary income tax and a 10% early liquidation penalty).
- (7) A 2008 Toyota Four Runner
- (8) A 2013 Dodge Challenger (driven by Nick).
- (9) Her clothing jewelry and personal effects.
- (10) 40% of the net proceeds from the sale of the Foro Stock in excess of \$500,000; and 50% of funds remaining after December 31, 2020 (from the first \$500,000 less certain and specific amounts for college)¹.
- (11) Solely responsibility for all her outstanding bills and obligations (less a \$25,000 contribution from Glen to reduce her outstanding credit card obligations; and \$35,000 contribution from him towards her attorneys' fees and costs).

Heather sold the former marital residence in December 2014, and netted \$64,800 from the transaction, after paying off all mortgages, lines of credit, repairs and closing costs.

Assets Awarded to Glen in Divorce Judgment

Pursuant to Articles 12—14 of the MSA, Glen received the following property:

- (1) All furniture, furnishings, and fixtures in his possession.
- (2) All bank account in his individual name.
- (3) All stocks, bonds, and other securities in his individual name, except the Foro Stock pursuant to Paragraph 14.
- (4) All certificates of deposit in his individual name.
- (5) All retirement plans in his name excepting the \$155,000 to Heather.
- (6) 2010 Toyota FJ Cruiser
- (7) 2011 Mercedes 450

- (8) 60% of the net proceeds from the sale of the Foro Stock in excess of \$500,000; and 50% of funds remaining after December 31, 2020 (from the first \$500,000 less certain and specific amounts for college)².
- (9) Sole responsibility for his own outstanding bills and obligations (plus a \$25,000 contribution to Heather to reduce her outstanding credit card obligations; and a \$35,000 contribution towards her attorney fees and costs.)

I. GOVERNING LAW ON MAINTENANCE REVIEWS

Blum v. Koster

The Supreme Court of Illinois has held that 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—which does not require the moving party to prove a substantial change in circumstances. *Blum v. Koster*, 235 Ill.2d 21, 35 (2009). Instead, the court should consider the statutory factors set forth in Subsections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (“IMDMA”) (750 ILCS 5/504(a), 510(a-5) (West Supp. 2017)) and determine whether to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms, in light of the evidence presented by the parties at hearing. *Blum*, 235 Ill.2d at 35 (citing *In re Marriage of Golden*, 358 Ill.App.3d 464, 471, (2005)).

Subsection 510(a-5) of the IMDMA

Subsection 510(a-5) of the IMDMA (750 ILCS 5/510(a-5) (West Supp. 2017)), sets forth nine factors for the court to consider in conjunction with a maintenance review (and modifying or extending an award):

- (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;

² Article 14, MSA.

- (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 Supp. 2017).

Subsection 504(a) of the IMDMA

Subsection 504(a) of the IMDMA sets forth 14 additional factors for the court's consideration in connection with a maintenance review:

- (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 Supp. 2017)(Emphasis added).

II. AN AWARD OF PERMANENT MAINTENANCE IS APPROPRIATE BASED ON HEATHER'S HEALTH CONDITIONS

The factors enumerated in Subsections 510(a-5) and 504(a) of the IMDMA (750 ILCS 5/510(a-5), 504(a) (West Supp. 2017)) support a finding in favor of Heather receiving an award of permanent maintenance.

The health of the applicant seeking a review and extension of maintenance is a relevant factor under Paragraph (3) of Subsection 510(a-5) of the IMDMA: "*any impairment of the present and future earning capacity of either party.*" 750 ILCS 5/510(a-5) (3) (West Supp. 2017) (Emphasis added). It is also a relevant factor under Paragraph (5) of Subsection 504(a) of the IMDMA: "*any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought*" (750 ILCS 5/504(a)(5) (West Supp. 2017)) and Paragraph (9) of Subsection 504(a) of the IMDMA: "*the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties.*" 750 ILCS 5/504(a)(9) (West 2017). Here, Heather's poor health is a relevant factor.

Our courts have held that the disabling illness of a spouse necessitates an award of permanent maintenance. In *In re Marriage of Brackett*, 309 Ill.App.3d 329 (1999), the court emphasized:

Permanent maintenance is appropriate when the former spouse is unemployable or employable only at a low income in light of the standard of living established during the marriage. **Permanent maintenance should be the rule not the exception when the former spouse is disabled to the point where he or she is unable to work; thus the court should concentrate heavily on the spouse's physical condition in fashioning the award.**

Brackett, 309 Ill.App.3d 329, 340 (1999) (Emphasis added) (Citations omitted).

In *Brackett*, the appellate court reversed the lower court's rehabilitative maintenance award and held that after a 20-year marriage, the wife, who had multiple sclerosis and was unable to work, should have been awarded permanent maintenance.

Likewise, in *In re Marriage of Chapman*, 285 Ill.App3d 377 (1996), the court reversed a denial of permanent maintenance to a former spouse suffering from myotonic dystrophy, even though the parties were only married for two years. *Id.* at 384. The wife's disease was disabling to the extent that she was unable to perform routine daily tasks. The *Chapman* court found that too much emphasis had been placed on the short duration of the marriage and not enough emphasis was given to the former spouse's physical condition as it related to her present and future earnings capacity. *Id.*; see also, *In re Marriage of Hellwig*, 100 Ill.App.3d 452 (1981) (trial court erred in awarding wife rehabilitative maintenance for five years where the marriage was lengthy, wife had been long absent from the job market and in view of wife's lack of special vocational skills or training, age and poor health (multiple recent surgeries)); *In re Marriage of Morse*, 240 Ill.App.3d 296 (1993) (court affirmed permanent maintenance award to 38-year-old wife, who was legally blind, after a 19-year marriage.)

In *In re Marriage of Stam*, 260 Ill.App.3d 754 (1994), the duration of the marriage was short—less than five years. Following the parties' separation, the former wife was diagnosed with multiple sclerosis, rendering her unable to work. The trial court awarded the former wife, who was in her mid-forties, reviewable maintenance for a period of three years. Upon the review at the end of the three-year period, she was awarded reviewable maintenance for another four years. The wife appealed from that order. The appellate court found that while a former spouse requesting maintenance has an affirmative duty to seek gainful employment, that duty "must be balanced against a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage." *Stam*, 260 Ill.App.3d at 757. (Emphasis added) The court concluded that it was proper to award the wife what amounted to permanent maintenance. *Id.* The court commented that multiple sclerosis is an unpredictable disease and

that it was possible that the former wife's symptoms could abate or that she could have a remission, but it was possible that her maintenance award would never be terminated if her health did not improve. *Id.*

Here, the Court was presented with evidence demonstrating that Heather's health problems are significant—both through her unrefuted testimony and through the medical records (medical insurance claims processing and medical billing records) that were introduced in evidence.

While Heather is presently able to work, her long-term prospects for continued employment earning substantial income comparable to the standard of living enjoyed during the parties 24 year marriage are questionable due to the chronic and degenerative nature of her conditions and the various health crises she has faced since November 2016, a little over a year ago.

Based on the above case precedent, this court will award Heather permanent maintenance in light of the progressive and degenerative nature of her conditions, the uncertainty that she will be able to continue to work in the future and earn a substantial income, as well as the other statutory factors discussed below.

III. HEATHER SHOULD BE AWARDED PERMANENT MAINTENANCE BASED ON ALL OF THE FACTORS SET FORTH IN SUBSECTIONS 510(a-5) AND 504(a) OF THE IMDMA

The parties' marriage was 24 years in duration. Heather is presently 48-years-old, an age when employment opportunities are limited at best. She is in poor health, as discussed above. Although she earned an MBA degree over 14 years ago, she has never used it. She wanted that education to better herself and for her own self-fulfillment. She only worked sporadically. Glen supported all of Heather's educational and limited employment choices throughout the marriage although he did encourage Heather to secure employment.

The assets of value that Heather was awarded in the divorce judgment were the former marital home, including all of the contents thereof, and \$155,000 from retirement accounts. She netted \$64,000 from the sale of marital home, after the payoff of all mortgages, lines of credit, repairs and closing costs. Heather had also borrowed substantial monies from her mother during the divorce proceedings, as

outlined above, which she slowly repaid after the divorce although Heather's testimony on these debts was unclear and confusing. These circumstances and Heather's continued spending patterns and incursion of additional debt above her income level left Heather in a poor financial condition. Heather is partially responsible for her financial status at the time of trial. Heather demonstrated deficits in her ability to manage money and to make appropriate and wise financial decisions.

As of January 24, 2017, Heather owned no assets of value and her credit card debt had grown to \$156,356.65. However, subsequent to that date, she incurred a total of \$9,974.85 in out-of-pocket, uncovered medical expenses, as a result of her medical condition and lengthy hospitalization. She also had to borrow \$12,300 from her mother after January 24, 2017 to make ends meet, after the Court temporarily reduced her support in February 2017.

Glen has a profession as a patent attorney and has been successful in his legal career. Although Glen testified that he was planning to start his own law firm in July 2017, he admitted that his net earnings should not be impacted since he would keep 100% of his billings (rather than share them with partners or a firm). Glen is able to pay long-term maintenance to Heather, his former wife of 24 years.

According to his January 30, 2017 Financial Affidavit, Glen has approximately \$10,000 in his bank accounts, at least \$203,120 in retirement funds, a loan receivable from Melior Innovations (his former employer) of \$15,000, an FJ Cruiser worth at least \$15,000, a capital account at Steptoe & Johnson of \$96,000 and substantial stock in Melior Innovations, PitRho, TessaFrac, Palidius and PicOnyx. He has approximately \$157,000 in debts (excluding student loans for the parties' children in the amount of \$173,617). (Ex. 43)

The evidence showed that the parties enjoyed a comfortable though not luxurious standard of living during the marriage. They lived in a 4,000 square foot, four-bedroom home in Naperville, Illinois. They owned various high end vehicles, includes a Mercedes SUV, Audi A4, Yukon Denali, Chevy Suburban and a convertible BMW. They owned two horses primarily for their daughter, Lindsey. They took vacations and pleasure trips to Saugatuck, Puerto Rico, the Bahamas and ski trips. Heather had her

hair and nails done on a regular basis and had various cosmetic procedures with Glen's approval, including Botox injections and other fillers.

There is no doubt that Glen's ability to earn income (past, present, and future) far exceeds anything that Heather could hope to earn. There is a substantial disparity between their respective earning capacities. There is minimal probability that Heather will ever earn anything close to the income necessary to maintain the standard of living that she enjoyed during the marriage, especially considering her declining health. However, Heather has the formal education and her firm belief that she can earn \$60,000.00 per year.

In re Marriage of Selinger, 351 Ill.App.3d 611 (2004) emphasized the appropriateness of permanent maintenance awards in situations involving former spouses with grossly disparate earning potentials:

Spouses with disparate earning potentials may warrant an award of permanent maintenance. See *In re Marriage of Neuman*, 295 Ill.App.3d 212, 216, 230 Ill.Dec. 398, 693 N.E.2d 876, 880 (1998). Upon dissolution of marriage, the "optimal goal of the maintenance act is for the dependent former spouse to become financially independent. However, under circumstances involving former spouses with grossly disparate earning potentials, this goal is often not achievable in light of the dependent former spouse's entitlement to maintain the standard of living established during the marriage." *In re Marriage of Lenkner*, 241 Ill.App.3d 15, 25, 181 Ill.Dec. 646, 608 N.E.2d 897, 904 (1993). While the goal of financial independence remains, it is to be measured in terms of the standard of living established during the marriage. **"Where there is a disparity in the earning powers of the former spouses, and the dependent former spouse cannot earn an income sufficient to become financially independent at the standard of living established during the marriage, the dependent former spouse may be entitled to continue to receive maintenance, if the payor spouse is in a position to provide it, even though this does not accomplish the goal of severing the economic ties of the former spouse."** (Emphasis in original.) *Lenkner*, 241 Ill.App.3d at 27, 181 Ill.Dec. 646, 608 N.E.2d at 905-06.

Selinger, 351 Ill.App.3d at 618. (Emphasis added). The court also noted that the wife should not be reduced to poverty or forced to sell assets to support herself after the divorce, especially when the husband has sufficient income to support her while meeting his own needs. *Id.* (citing *In re Marriage of Harlow*, 251 Ill.App.3d 152, 157 (1993)).

In *In re Marriage of Brankin*, 2012 IL App (2d) 110203, a permanent maintenance award to a wife of a 29-year marriage was affirmed in light of her inability to sustain the marital standard of living without receiving support from her husband. She received permanent maintenance although she had a job that paid a good salary and was awarded \$60,000 in assets in the divorce.

In *In re Marriage of Heroy*, 315 Ill.App.3d 640 (2008), the permanent maintenance award to the wife of 26-year marriage was affirmed because she had devoted the majority of her time to raising the parties' children during the marriage and was unable to sustain the lavish "millionaire" standard of living that the parties had enjoyed during the marriage, without financial assistance from the husband. She was awarded permanent maintenance despite the fact that she had masters of library science and law degrees, worked as full-time law librarian for about five years at beginning of marriage, and was currently working about 10 hours a week in her own publishing business.

During the MacFarland/Bevis marriage, the parties lived a comfortable but not a lavish lifestyle. Heather's efforts at employment were insufficient to aid or support the family and the expenses. Maintenance of the comfortable family lifestyle was due to the financial efforts of Glen. Although Glen supported Heather's interests, including furthering her educational pursuits, Heather has been unable (and perhaps in part unwilling) to apply her formal education in a way that would allow her to become self-supportive. Factors including her health and her age are factors against Heather ever becoming self-supportive to maintain the comfortable lifestyle enjoyed during the parties 24 year marriage. The rationale of, *Selinger*, , *Brankin* and *Heroy* should be applied here income potentials, as discussed above. That gap will never be bridged. There is no way that Heather will ever be able to sustain the approximate marital standard of living based on her income alone, without support from Glen. Based on these circumstances, this Court will extend Heather's maintenance, and award her permanent maintenance.

Heather requested that this Court award her permanent maintenance in an amount sufficient to equal to her monthly living expenses (\$10,631.33) *plus* her monthly debt service (\$5,699.03), as reflected

on her January 24, 2017 Financial Affidavit, i.e., **\$16,330.36** per month, which amount she believes is fair and reasonable under the circumstances. This court finds that her monthly debt service is due in part to her lack of money management skills and lack of control in her spending habits while living beyond her means. Heather believes that she will be able to earn approximately \$60,000.00 annually in the real estate business. The court finds this belief to be reasonable due to her formal education, training and commitment to succeed in her real estate business. Therefore, this court will impute \$60,000.00 of earned income to Heather. Glen will pay the sum of \$10,000.00 per month for permanent maintenance. The maintenance payments awarded will be includable in Heather's gross income and deductible from Glen's gross income for income tax purposes. Heather must now establish a spending pattern to live within her means. In the event this maintenance award is the subject of future court proceedings or modifications, this award shall continue to be based upon factors, irrespective of any changes to the tax code, which would import to Glen the equivalent of deducting these payments from his gross income and to including the payments in Heather's gross income.

Here, it is not realistic to expect Heather to ever be able to support herself without this maintenance award in a reasonable approximation of the marital standard of living.

Heather, whose testimony (on direct examination, cross-examination, and adverse examination and rehabilitation) took up a majority of the testimonial phase of these proceedings, appeared confused at times. She acknowledged mistakes or inconsistencies where pointed out. The toll of her medical conditions and perhaps her medication impacted her ability at times to give clear and concise responses. Although Heather appeared credible in her testimony that she desires to work hard and will attempt to succeed in her efforts at building her real estate business, the court finds that despite her wishes and hopes to succeed, it is likely that Heather will struggle in achieving complete financial independence from Glen.

For all the above reasons, this Court finds that Heather met her affirmative duty to obtain employment but achievement of self-sufficiency is an unrealistic goal.

Glen's testimony that the \$7,085 per month (\$85,020 per year) in expenses listed on his Financial Affidavit, which he pays for the parties' emancipated adult children, is credible. However, his desire to assist his adult children is solely his choice as a kind and generous parent. The total of these expenditures are not found by this court to be reflective of his legal obligations under the parties' Judgment.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1). The Court having considered the factors set forth in Sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act in light of the evidence presented by the parties at trial, Heather MacFarland's Petition for Review and Extension of Maintenance, filed August 17, 2016 is granted.

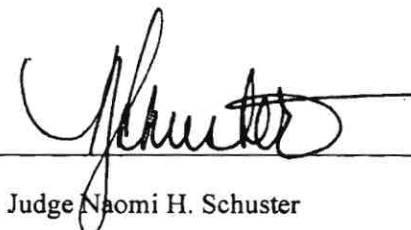
2). Heather is hereby awarded permanent maintenance in the amount of \$10,000.00 per month.

3) This award of maintenance is retroactive to January 1, 2017.

4). Glen shall pay the retroactive amount within twelve months of the entry of this order.

5) Each party shall be solely responsible for their own attorney fees.

ENTERED: January 19, 2018



Judge Naomi H. Schuster