2024 IL App (4th) 240083-U

NO. 4-24-0083

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 30, 2024
Carla Bender
4th District Appellate
Court, IL

| | | |
|---|---|---|
| *In re* MARRIAGE OF | ) | Appeal from the |
| ANNE E.L. FOLLEY, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Peoria County |
| and | ) | No. 10D643 |
| GREGORY F. FOLLEY, | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | Alicia N. Washington, |
| | ) | Judge Presiding. |

JUSTICE DOHERTY delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not abuse its discretion in reducing the payor spouse's permanent maintenance obligation from $20,000 per month to $14,000 per month after the appellate court remanded with directions to reexamine the prior reduction of the payor spouse's maintenance obligation to $0 per month.

¶ 2 Petitioner Anne E.L. Folley (Anne) and respondent Gregory F. Folley (Greg) were divorced after nearly 28 years of marriage. The judgment dissolving their marriage incorporated a marital settlement agreement (MSA), which provided that Greg would pay Anne permanent maintenance of $20,000 per month. After Greg was forced into early retirement from his position at Caterpillar, Inc. (Caterpillar), the trial court reduced his maintenance obligation to $0 per month. Anne appealed; we found that the court abused its discretion by abating Anne's maintenance altogether, so we "vacate[d] the trial court's judgment and remand[ed] with directions for the trial

court to reexamine its modification of Greg's maintenance obligation in light of Greg's clear ability to pay maintenance and to calculate any arrearages." *In re Marriage of Folley*, 2021 IL App (3d) 180427, ¶ 46 (*Folley I*). On remand, the court awarded Anne maintenance of $14,000 per month. Greg then brought the present appeal, arguing that the court failed to comply with our mandate in *Folley I* and that the court's award of $14,000 per month is excessive. Because the trial court acted within the scope of our remand and did not abuse its discretion, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We recounted the facts of this case at length in *Folley I* (*id.* ¶¶ 3-31), so we will only briefly summarize them here.

¶ 5 Greg and Anne were married in August 1983. Between 1984 and 2002, the parties had nine children. By agreement, Anne stayed home and cared for the children, while Greg worked outside of the home and earned all of the marital income. Greg began working at Caterpillar in 1995 and became a vice president of the company in 2009. In April 2010, the parties separated, and Anne filed for divorce in October 2010 pursuant to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2010)). The trial court entered a judgment dissolving their marriage in June 2012, incorporating the MSA.

¶ 6 The MSA provided that the parties' $5 million estate, including Greg's retirement benefits, would be divided roughly equally between them. In addition, Greg would pay Anne permanent maintenance in the fixed amount of $20,000 per month and additional maintenance of 25% of any future short-term incentive payments he received from Caterpillar, after taxes. Anne continued raising their four minor children, paying for the children's expenses out of her maintenance award. Greg continued to work for Caterpillar, where his income eventually reached $2 million per year.

¶ 7 In June 2017, Greg was forced to retire from Caterpillar due to corporate restructuring. Greg had intended to work for Caterpillar for at least another four years, at which point he would have received full retirement benefits at an unreduced rate. In July 2017, Greg petitioned the trial court for a modification of his maintenance obligation, arguing that his forced early retirement was a substantial change in circumstances warranting reduction of his maintenance obligation. See 750 ILCS 5/504, 510 (West 2016) (governing modification of maintenance obligations).

¶ 8 The trial court held a hearing on the petition in March 2018. At that time, Anne had approximately $7.5 million in assets, and Greg had approximately $12 million. The court found that Greg's forced retirement from Caterpillar was a substantial change in circumstances warranting modification of the parties' agreed-upon permanent maintenance award. The court reduced Greg's maintenance obligation to $0 commencing in March 2018 and continuing until he obtained employment. Anne appealed.

¶ 9 On appeal, we held that the trial court's finding that Greg could not pay maintenance was against the manifest weight of the evidence in light of his $12 million in assets. *Folley I*, 2021 IL App (3d) 180427, ¶ 39. We also held that the court abused its discretion by indefinitely reducing his maintenance obligation to $0 in light of his clear ability to pay maintenance. *Id.* ¶¶ 44-45. We declined to reinstate the $20,000 per month maintenance obligation from the MSA as Anne requested, but "we vacate[d] the trial court's judgment and remand[ed] with directions for the trial court to reexamine its modification of Greg's maintenance obligation in light of Greg's clear ability to pay maintenance and to calculate any arrearages." *Id.* ¶ 46.

¶ 10 On remand, the trial court held a hearing on the petition at which no new evidence was presented. Greg argued for a permanent maintenance award of $3528.23 per month, which he

alleged would equalize the parties' monthly income. Anne argued for an award of $16,000 per month. On August 2, 2023, the court ruled on the petition from the bench, stating that "the maintenance will be set in the amount of $14,000 per month." The court calculated and awarded arrearages based on this amount.

¶ 11 The trial court memorialized its ruling in a September 5, 2023, judgment order approved as to form by Anne's counsel and entered *nunc pro tunc* to August 2, 2023. The order provided "[t]hat commencing as of March, 2018 [Greg] shall pay the sum of $14,0000 [*sic*] per month to [Anne] in taxable/deductible spousal maintenance with the next monthly payment due from [Greg] to [Anne] on August 25, 2023." The court denied Greg's motion to reconsider.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 The parties do not dispute that the trial court awarded $14,000 per month in maintenance rather than $140,000 per month, and it is clear from the hearing transcript, the parties' postjudgment memoranda, and Greg's notice of appeal that the written judgment order reading "$14,0000" should have read "$14,000" or "$14,000.00" in accordance with the court's ruling from the bench on August 2, 2023. For avoidance of any doubt that might arise from this scrivener's error, we exercise our power pursuant to Illinois Supreme Court Rule 366(a)(1) (eff. Feb. 1, 1994) to amend the judgment order by striking out "$14,0000" and inserting "$14,000" *nunc pro tunc* to August 2, 2023. See *Pliske v. Yuskis*, 83 Ill. App. 3d 89, 96 (1980) (correcting typographical error in trial court's judgment order); *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 50 (1999) ("*Nunc pro tunc* orders are employed by courts to correct clerical errors in written orders and thereby make final orders entered in a case conform to the actual judgment of the

court."). Having done so, we will consider whether the trial court's award of $14,000 per month was in error.

¶ 15 A. The Mandate Rule

¶ 16 Because this case returns to us after remand, we must determine the correctness of the proceedings on remand in the context of our mandate in *Folley I*. See *In re Marriage of Pitulla*, 256 Ill. App. 3d 84, 88 (1993). "The trial court is bound by this court's mandate and should consult the opinion to determine what the mandate requires. [Citation.] Whether the trial court complied with the mandate is a question of law, subject to *de novo* review. [Citation.]" *Emerald Casino, Inc. v. Illinois Gaming Board*, 377 Ill. App. 3d 930, 935 (2007).

¶ 17 In *Folley I*, we directed "the trial court to reexamine its modification of Greg's maintenance obligation in light of Greg's clear ability to pay maintenance and to calculate any arrearages." *Folley I*, 2021 IL App (3d) 180427, ¶ 46. We explained:

> "[I]t is clear from the record that Greg had the present ability to continue to pay maintenance in some amount and, arguably, the ability to meet his full maintenance obligation of [$20,000] per month as agreed to by the parties under their MSA. [Citation.] Based on the evidence presented, we conclude that no reasonable person would have determined that Greg had an inability to pay at least some portion of the permanent maintenance award the parties had agreed to under their MSA. Accordingly, the trial court abused its discretion by reducing Anne's maintenance to $0. [Citation.]" *Id.* ¶ 44.

Greg seizes on our use of the phrase "some portion," arguing that "by informing the Trial Court to provide 'some portion,' the Appellate Court was instructing the Trial Court to provide more than nothing (which was the overturned amount) but less than a large portion of the original award."

¶ 18 Although Greg pulls the words "some portion" from context as if they were prescriptive of a specific outcome, he ignores our statements that the award should be "*at least* some portion" of the original maintenance amount and that he was "arguably" capable of paying the full amount. (Emphasis added.) *Id.* We discern no implication from our opinion in *Folley I* that "less than a large portion of the original award" was expected on remand. By concluding that the trial court abused its discretion by not awarding "at least some portion" of $20,000 per month (*id.*), we clearly intended for the trial court to reexamine its exercise of discretion and award a reasonable amount of maintenance above $0 per month, and perhaps as high as the full $20,000 per month award from the MSA. It was implicit that the question of whether the trial court's maintenance award was too large or too small would be determined not by a semantic analysis of the word "some" but by our usual review of maintenance awards for an abuse of discretion.

¶ 19 Accordingly, we conclude that the trial court complied with our mandate in *Folley I* by " 'exercis[ing] its discretion within the bounds of the remand.' " *In re Marriage of Jones*, 2019 IL App (5th) 180388, ¶ 24 (quoting *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351 (2002)). We now turn to the question of whether the court abused that discretion.

¶ 20 B. The Amount of Maintenance

¶ 21 As we explained in *Folley I*:

> "The decision to modify a maintenance award is within the trial court's discretion and will not be disturbed absent an abuse of discretion. [Citation.] An abuse of discretion takes place when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' [Citation.] Also, a reviewing court will not reverse the court's factual findings unless they are against [the] manifest weight of the evidence. [Citation.]

'Findings are against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based upon any of the evidence.' [Citation.]" *Folley I*, 2021 IL App (3d) 180427, ¶ 34.

¶ 22 1. *Greg's Share of the Parties' Total Income*

¶ 23 The trial court on remand found that Greg's forced retirement constituted a substantial change in circumstances warranting a 30% reduction of the parties' agreed-upon $20,000 per month maintenance obligation. Incredibly, Greg argues that the court somehow "ma[d]e Greg's circumstances worse" by saving him $6000 per month. Indeed, if this statement were accurate, one would expect Greg to be arguing for a higher maintenance award, as apparently there is a strange inverse relationship between the amount of the award and the burden on the payor.

¶ 24 According to Greg, the proper metric is not the amount of maintenance but the percentage share of the parties' total income that Greg is allowed to keep. Greg claims that under this metric, his forced retirement resulted in him keeping 36.28% of the parties' total monthly postretirement income after paying maintenance and the trial court's *reduction* in his maintenance on remand resulted in his keeping just 20.75% of that same income. Given that Greg is keeping *more* money in *absolute* terms after remand, one might question how he could be keeping *less* money in *relative* terms. The answer is that he is not.

¶ 25 Greg derives his figures from the following two tables in his opening brief:

| POST-RETIREMENT INCOME | |
|---|---|
| **Description:** | **Amount Per Month:** |
| Anne's Pension | 10,800.00 |
| Anne's Maintenance | 20,000.00 |
| Anne's Invest. Income | 9,600.00 |
| **Anne's Total Income** | **40,400.00** |

| POST-REMAND INCOME | |
|---|---|
| **Description:** | **Amount Per Month:** |
| Anne's Pension | 10,800.00 |
| Anne's Maintenance | 14,000.00 |
| Anne's Invest. Income | 9,600.00 |
| **Anne's Total Income** | **34,400.00** |

| | | | |
|---|---|---|---|
| Greg's Pension | 16,233.00 | Greg's Pension less Maint. | 2,233.00 |
| Greg's Other Income | 6,774.00 | Greg's Other Income | 6,774.00 |
| **Greg's Total Income** | **23,007.00** | **Greg's Total Income** | **9,007.00** |
| **Parties' Total Income** | **63,407.00** | **Parties' Total Income** | **43,407.00** |
| Anne's Share | 63.72% | Anne's Share | 79.25% |
| Greg's Share | 36.28% | Greg's Share | 20.75% |

¶ 26 It is immediately apparent from Greg's use of the phrase "less Maint." that these tables do not present an apples-to-apples comparison; the right-hand table subtracts Anne's maintenance payment from Greg's income, whereas the left-hand table does not. Furthermore, by adjusting only Anne's income in the left-hand table but not his own income, Greg has effectively allowed both parties to realize the same $20,000 in income, erroneously inflating the parties' total income by $20,000. We note that when calculating maintenance, courts do not include the resulting maintenance payments themselves as income for the recipient, which avoids this double-counting problem. See 750 ILCS 5/504(b-3), (b-3.5) (West 2022).

¶ 27 The following tables provide the correct figures for comparison, using the parties' incomes from their 2018 financial affidavits:

| POST-RETIREMENT INCOME | | POST-REMAND INCOME | |
|---|---|---|---|
| **Description:** | **Amount Per Month:** | **Description:** | **Amount Per Month:** |
| Anne's Pension | 10,796.13 | Anne's Pension | 10,796.13 |
| Anne's Other Income | 9,614.25 | Anne's Other Income | 9,614.25 |
| **Anne's Gross Income** | **20,410.38** | **Anne's Gross Income** | **20,410.38** |
| Maintenance | 20,000.00 | Maintenance | 14,000.00 |
| **Anne's Adjusted Income** | 40,410.38 | **Anne's Adjusted Income** | 34,410.38 |
| Greg's Pension | 16,233.37 | Greg's Pension | 16,233.37 |
| Greg's Other Income | 7,450.25 | Greg's Other Income | 7,450.25 |
| **Greg's Gross Income** | **23,683.62** | **Greg's Gross Income** | **23,683.62** |
| Less Maintenance | (20,000.00) | Less Maintenance | (14,000.00) |
| **Greg's Adjusted Income** | **3,683.62** | **Greg's Adjusted Income** | **9,683.62** |

| | | | |
|---|---|---|---|
| **Parties' Total Income** | **44,494.00** | **Parties' Total Income** | **44,494.00** |
| **Share of Income (Adjusted ÷ Parties' Total)** | | **Share of Income (Adjusted ÷ Parties' Total)** | |
| Anne's Share | 91.72% | Anne's Share | 78.24% |
| Greg's Share | 8.28% | Greg's Share | 21.76% |

¶ 28 These figures confirm the obvious: Greg is better off financially when his maintenance obligation is lower, whether his maintenance-adjusted gross income is measured in dollars or as a percentage share of the parties' total income. This is, of course, the reason why Greg is urging this court to hold that his maintenance obligation should be even lower still. Because our closer inspection of Greg's specious figures has shown that they actually contradict his overall argument, we will assume that this error was the product of an oversight.

¶ 29 2. *Liquidation of Greg's Assets*

¶ 30 In any event, Greg is incorrect that the propriety of the trial court's award of maintenance should be measured purely by reference to the parties' total income. Although it is true that 40% of the parties' combined gross or net income can serve as a cap on the amount of maintenance under the statutory guidelines, those guidelines apply only "[i]f the combined gross annual income of the parties is less than $500,000." 750 ILCS 5/504(b-1)(1) (West 2022). Here, the combined gross annual income of the parties exceeds $500,000, so we are not concerned with the statutory cap but with "the court's consideration of all relevant factors set forth in subsection (a) of [section 504 of the Act]." *Id.* § 504(b-1)(2). As we explained in *Folley I*, those factors include:

> "(1) the income and property of both parties; (2) the needs of each party; (3) the 'realistic' present and future earning capacity of each party; (4) any impairment of the 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 required for 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 disability and retirement income); (11) the tax consequences of the property division; (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 agreements of the parties; and (14) any other factor that the court expressly finds to be just and equitable." *Folley I*, 2021 IL App (3d) 180427, ¶ 36 (citing 750 ILCS 5/504(a) (West 2016)).

¶ 31 A number of these factors require some consideration of the parties' incomes, but income is not the sole consideration; indeed, the first factor is "the income *and property* of both parties." (Emphasis added.) *Id.* Greg's singular focus on the parties' incomes at the expense of the remaining 13½ factors is the exact approach we rejected in *Folley I*, where we held that despite Greg's significant loss of income from his forced retirement, he retained the clear ability to pay Anne maintenance by liquidating a portion of his assets. *Id.* ¶ 39; see *In re Marriage of Murphy*,

359 Ill. App. 3d 289, 304 (2005) ("No one factor is determinative of the issue concerning the propriety of the maintenance award once it has been determined that an award is appropriate.").

¶ 32 Despite our previous holding, Greg continues to take issue with the prospect that he should be required to liquidate any of his assets. According to Greg:

> "[I]t is settled law that a maintenance obligee has the duty to seek financial independence but does not require her to liquidate her assets to do so. [Citation.] Absent special circumstances, the obligor should be treated with like judicial fairness. Therefore, the obligor should not be required to liquidate his assets when the obligee has financial independence and no foreseeable emergency." (citing *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 828 (1992)).

¶ 33 First, when dealing with what is "settled law," Greg should remember that some matters are settled specifically for this case, because the law-of-the-case doctrine prevents relitigation of a matter decided in an earlier appeal in the same case. *In re Marriage of Hundley*, 2019 IL App (4th) 180380, ¶ 52; see *In re 2021 Judicial Redistricting*, M.R. 30858 (Dec. 8, 2021) ("If a case is heard by one appellate district on appeal and if a subsequent appeal in that case is heard by a new appellate district pursuant to this [redistricting] order, the new district shall treat the decision of the prior district as the law of the case.").

¶ 34 Second, it is simply not the law of Illinois that special circumstances or a foreseeable emergency are required before a payor spouse can be required to liquidate assets to pay maintenance to a financially independent former spouse; the longstanding rule is that "a former spouse is not ' "required to lower the standard of living established in the marriage as long as the payor spouse has *sufficient assets* to meet his needs and the needs of his former spouse." ' " (Emphasis added.) *In re Marriage of Bernay*, 2017 IL App (2d) 160583, ¶ 17 (quoting *In re*

*Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 87, quoting *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008), citing *In re Marriage of Drury*, 317 Ill. App. 3d 201, 207 (2000), citing *In re Marriage of Koberlein*, 281 Ill. App. 3d 880, 885 (1996)).

¶ 35 This rule makes good sense; otherwise, the payor spouse could invest surplus income in illiquid assets when his income is high to avoid paying maintenance when his income is low by claiming that it would be unfair to require him to liquidate those assets absent special circumstances. Of course, the true unfairness would be to the former spouse, who would then have more difficulty obtaining maintenance even though she likely played no role in how the payor spouse chose to invest his surplus income after their marriage was dissolved. In contrast, both spouses played a role in the standard of living established in the marriage, which is why the payor spouse may be required to liquidate some of his assets and pay maintenance so the former spouse can maintain that standard. *Id.*

¶ 36 Here, for instance, Greg's October 2011 financial affidavit shows that his gross monthly income from Caterpillar was $105,331.50 ($38,880.00 in wages + $66,451.50 in short-term incentives), and Anne's May 2012 financial affidavit shows that her gross monthly income was $0. The June 2012 MSA divided the parties' marital assets roughly equally between them and provided that Anne would receive permanent maintenance of $20,000 per month and additional maintenance of 25% of any future short-term incentive payments, after taxes. The approximately $4.5 million discrepancy between the parties' assets in March 2018 was a direct result of the sizeable discrepancy between Anne's maintenance payments and Greg's income between 2012 and 2017, when he was at the height of his preretirement earning capacity. However, "the standard of living established in the marriage" never changed, even as Greg's income changed into assets.

¶ 37 Workers invest for retirement precisely because they intend to eventually liquidate at least some of those investments to replace their wages, and they tend to invest in the hopes that they and their spouses will maintain the same standard of living they enjoyed before retiring, at a minimum. Greg's argument invites us to depart from long-standing precedent and impose a new "special circumstances" requirement on a vast swath of maintenance recipients when their former spouses retire and transition from earning wages to liquidating investments to pay expenses. We decline the invitation.

¶ 38 3. *The Terms of the MSA*

¶ 39 Greg argues that when the parties entered the MSA, they contemplated that Anne "would receive maintenance in an amount that provided her approximately 30 percent of the Parties' income and Greg approximately 70 percent of the Parties' income." We see no basis for this argument in the MSA itself, which guaranteed Anne maintenance both as a fixed amount and as a percentage of a specific portion of Greg's preretirement income. See *In re Marriage of Grandt*, 2022 IL App (2d) 210648, ¶ 19 ("If the [MSA's] language is clear and unambiguous, it should be given its plain and ordinary meaning."); see also *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 120 ("[A]n award of maintenance may be in the form of a percentage of income in lieu of a fixed amount."). Furthermore, the MSA has myriad provisions addressing the parties' retirement benefits, and none of those provisions lend support to Greg's argument that $20,000 was intended to approximate 30% of the parties' monthly postretirement income. Had these sophisticated contracting parties intended for Greg to provide permanent maintenance through such a formula, rather than as a fixed amount, they easily could have done so, just as they did with the additional maintenance in the subsequent paragraph of the MSA. See *Thompson v. Gordon*, 241 Ill. 2d 428, 449 (2011) ("[T]here is a presumption against provisions that easily could have

been included in a contract but were not."); see also *Grandt*, 2022 IL App (2d) 210648, ¶ 19 ("[A]ny [MSA] is a contract and interpreted according to the rules and principles of contract interpretation.").

¶ 40 To be sure, the parties entered the MSA contemplating that Greg would "continue to work until at least the age of 62, *** the age he would have received full retirement benefits at an unreduced rate," which is why we upheld the trial court's conclusion that Greg's forced retirement at 58 was a substantial change in circumstances potentially warranting a departure from the maintenance provision of the MSA. *Folley I*, 2021 IL App (3d) 180427, ¶ 7; *contra Bernay*, 2017 IL App (2d) 160583, ¶ 18 (finding no substantial change in circumstances when the payor spouse's "retirement was clearly contemplated when permanent maintenance was ordered"). But once the court concluded that such a departure was appropriate, the terms of the MSA, explicit or implicit, were no longer conclusive on the amount of maintenance; they were just one of many factors for the court to consider. See 750 ILCS 5/504(a)(13) (West 2022). Whether the proper interpretation of "$20,000" is "$20,000" or, as Greg argues, "approximately 30 percent of the Parties' income," Greg petitioned the court to *modify* the permanent maintenance provision of the MSA, not merely to replace one interpretation of that provision for another. After the court jettisoned the letter of the MSA at Greg's request, his claim that the court should have given controlling weight to what he views as the spirit of the MSA simply falls flat.

¶ 41 4. *Other Factors*

¶ 42 So far, we have addressed only three factors from section 504 of the Act: "the income and property of both parties," "all sources of public and private income (including disability and retirement income)," and "any valid agreements of the parties." *Folley I*, 2021 IL App (3d) 180427, ¶ 36 (citing 750 ILCS 5/504(a)(1), (10), (13) (West 2016)). Greg's argument

that the trial court on remand failed to afford these three factors the weight he thinks they deserve would not be a sufficient basis for reversal, even if we were inclined to weigh those factors as Greg suggests. See *In re Marriage of Virdi*, 2014 IL App (3d) 130561, ¶ 26 ("It is not our job to reweigh the statutory factors, and absent an abuse of discretion, we will not substitute our judgment for that of the trial court."). Unlike in *Folley I*, where we found that the trial court abused its discretion by focusing almost entirely on one half of one factor (*Folley I*, 2021 IL App (3d) 180427, ¶ 39), the court on remand considered "all relevant factors set forth in subsection (a) of [section 504]" (750 ILCS 5/504(b-1)(2) (West 2016)). As such, we will uphold the trial court's weighing of the statutory factors "so long as the balance struck by the court is reasonable under the circumstances." *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485 (1992).

¶ 43 Greg largely disregards the remaining factors; indeed, his singular focus on income invites us to conduct the same analysis that we found constituted reversible error in *Folley I*. Greg counters in his reply brief that "Anne urges the Court to consider one, and only one, section 504 factor, namely, Greg's post-dissolution assets." This attempt at whataboutism is, quite frankly, untrue. As Anne points out in her brief, many of the remaining section 504 factors weigh decidedly in her favor. In particular, she raised the parties' nine children over 27 years of marriage and was unlikely to be able to obtain anything other than entry-level employment because of her dated educational skillset and arthritic hip. See 750 ILCS 5/504(a)(3), (4), (6), (8), (9), (12) (West 2022). In contrast, Greg had the ability to return to work. See *id.* § 504(a)(3), (5), (6), (9). The tax consequences of the maintenance award benefitted Greg, who could deduct the maintenance from his taxable income because Anne added it to hers. See *id.* § 504(a)(11). Although the record contained relatively little evidence of the parties' standard of living during the marriage, "the record [wa]s clear that the parties' 'standard of living' included their ability to consistently save

and invest money and accumulate assets." *Folley I*, 2021 IL App (3d) 180427, ¶ 43; see 750 ILCS 5/504(a)(7) (West 2022). Neither party has argued that factor (14), the catchall factor, is relevant to this case. See *id.* § 504(a)(14).

¶ 44 The evidence on the remaining factor, "the needs of each party" (see *id.* § 504(a)(2)) is admittedly mixed, and significant portions of the parties' expenses are hard to characterize as "needs." See *Folley I*, 2021 IL App (3d) 180427, ¶ 17 (mentioning the parties' luxurious lifestyle). Anne's expenses for child support were lower in 2018 than in 2012 because only one of the parties' children was still a minor, and other expenses identified on the parties' financial affidavits, such as home repairs, car payments, and their children's college expenses, were likely to be time-limited as well. Still, as we noted in *Folley I*, "an award of maintenance must be made on the basis of the circumstances disclosed by the evidence[,] and a trial court should not speculate as to the future condition of the parties in determining maintenance." *Id.* ¶ 44 (citing *In re Marriage of Bothe*, 309 Ill. App. 3d 352, 356 (1999)). Moreover, a number of Greg's expenses were voluntary, nonlegal obligations, which " 'are not to be considered in deciding whether maintenance should be modified.' " *Id.* ¶ 41 (quoting *In re Marriage of Kuper*, 2019 IL App (3d) 180094, ¶ 24). The fact that the trial court's award of maintenance exceeded Anne's expenses is not a basis for finding an abuse of discretion, particularly in light of the other statutory factors in Anne's favor. See *In re Marriage of Culp*, 341 Ill. App. 3d 390, 398 (2003); see also *In re Marriage of Nord*, 402 Ill. App. 3d 288, 303-04 (2010) (upholding award of $17,000 per month in permanent maintenance after 34 years of marriage where "the parties lived an extravagant lifestyle").

¶ 45 Despite Greg's arguments on some of the relevant factors, we conclude that overall, "the balance struck by the court [wa]s reasonable." *Miller*, 231 Ill. App. 3d at 485.

¶ 46 5. *Excessiveness*

¶ 47 Finally, Greg reiterates his belief that the amount of maintenance awarded is simply too high as a percentage of the parties' postretirement income, suggesting that there is a lack of precedent for comparable awards under this metric. Even assuming this allegation is true—an allegation that Greg has not supported by applying this metric to any supposedly disparate cases—it is not dispositive because each case must be determined on its own facts (see *id.*), a principle underscored by the Act's eschewing of income-based maintenance calculations in cases where the parties' combined income is as high as it is here (see 750 ILCS 5/504(b-1)(2) (West 2022)). That said, $14,000 per month is not unprecedented in absolute terms when wealthy parties are involved; we upheld an even higher award of $17,000 per month in permanent maintenance to a former spouse who had raised the parties' two children and had not worked outside of the home in 30 years. *Nord*, 402 Ill. App. 3d at 290; see *Murphy*, 359 Ill. App. 3d at 307 (upholding award of $15,000 per month in temporary maintenance). The award in *Nord* was lower than the $20,000 per month the parties here agreed to in their MSA, an amount that Greg would likely still be paying if he had not been forced to retire early. See *Bernay*, 2017 IL App (2d) 160583, ¶ 18. On these facts, Greg's unsupported argument that $14,000 per month is beyond the pale does not carry water.

¶ 48 Greg argues that this case is different because it involves his assets, as opposed to his income. This argument has only superficial plausibility because the assets Greg accumulated after the parties' divorce largely resulted from his exceptionally high income in his final five years at Caterpillar, where he earned approximately 70% of the parties' total annual income. During Greg's previous 17 years at Caterpillar, of course, Greg was earning 100% of the parties' income because Anne was at home raising their children. In fact, the record shows that when Greg started out at Caterpillar in August 1995, Anne was caring for their six older children, aged 11, 9, 7, 5, 3,

and 1; their seventh child was born the following month. Greg's $2 million annual income as a vice president of Caterpillar in 2017 was doubtless due to his own hard work, but during his entire tenure at Caterpillar, Anne was at home caring for between one and nine of his minor children. As we have explained:

> "Marriage is a partnership, not only morally but financially. Spouses are coequals and homemaker services must be recognized as significant when the economic incidents of divorce are determined. The former homemaker should not be penalized for having performed his or her assignment under the agreed-upon division of labor within the family. It is inequitable upon dissolution to saddle the former homemaker with the burden of his or her reduced earning potential and to allow the wage-earning former spouse to continue in the advantageous position he or she reached through their joint efforts." *In re Marriage of Lenkner*, 241 Ill. App. 3d 15, 25 (1993).

Greg's advantageous position with respect to the parties' postretirement assets, no less than his advantageous position with respect to the parties' preretirement income, is a product of the parties' joint efforts during his long career at Caterpillar, and Anne's contribution to those efforts was significant, even if it is not easily quantified.

¶ 49 In sum, we conclude that the trial court did not abuse its discretion by reducing Greg's $20,000 per month maintenance obligation to $14,000 per month, rather than some lower amount.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we modify the trial court's judgment order by striking out "$14,0000" and inserting "$14,000" *nunc pro tunc* to August 2, 2023, and we affirm the judgment as modified.

¶ 52 Affirmed as modified.