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Effort to seek work and maintenance

There has been a trend in the law to recognize that in certain cases where the marriages are of significant duration, a significant disparity in incomes or one of the parties forgoing a career to be the homemaker and primary caregiver for children, permanent maintenance is appropriate.

The revision of the maintenance statutes last year recognizes that if the statute applies, for marriages longer than 20 years, the spousal support obligation could be equal to the length of the marriage or permanent. A question sometimes arises as to what obligation does a person receiving permanent maintenance have to seek employment?

In the recent Illinois Supreme Court opinion *In re Marriage of Heroy* 2017 IL 12025, the court avoided deciding the issue of “the duty, if any, of permanent maintenance recipients to seek and become self-supporting.” This article reviews the existence of the obligation to seek and accept employment and in dicta clarification that the *Heroy* decision may offer.

To understand the issue, the starting place is the maintenance statute.

The statute has been revised over the years, but factors the court is to consider have been somewhat consistent and following case law on the issue. The current statute governing maintenance includes factors which

repeatedly reference a party’s “present and (or) future income capacity.”

In addition, another factor of the statute requires the consideration of “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.”

Assuming maintenance is awarded, another statute pertaining to the review or modification of maintenance requires that the court consider “the efforts, if any, made by the party receiving maintenance to become self-supporting and the reasonableness of the efforts where they are appropriate.”

Illinois case law has been developed which strongly favors that even in permanent maintenance situations the recipient has an affirmative obligation to seek employment (see *In re Marriage of Sines-Patel*; *In re Marriage of Sweet*; *In re Marriage of Callaway*).

Courts have unequivocally held that this obligation applies to circumstances where permanent or maintenance for an indefinite period is awarded (See *In re Marriage of Dunseth*; *In re Marriage of Haas*; *In re Marriage of Jones*).

Failure to fulfill the obligation to seek and accept employment can be a basis to modify or terminate maintenance (See *In re*



Timothy M. Daw is a senior partner at Schiller DuCanto & Fleck LLP whose practice concentrates on complex financial matters, business valuations, tax planning, shareholder divorce, custody disputes, property division, maintenance issues and prenuptial agreements. He can be reached at tdaw@sdflaw.com.

Marriage of Mayhall; In re Marriage of Cantrell; In re Marriage of Koenigsknecht; In re Marriage of McGory.

The basis for the *Heroy* court’s not deciding the question was stated to be that “the circuit

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court in this case reviewed [the recipient’s] efforts and found them to be sufficient.” While the Illinois Supreme Court in *Heroy* did not alter the affirmative obligation requirement, the court did

specifically note that “the self-support factor is just one of several factors...” the trial court was required to consider.

The *Heroy* court acknowledged that the maintenance recipient’s efforts in the case could be characterized as “minimal.” The decision’s import could be construed that even where a maintenance recipient fails to fulfill his or her affirmative obligation, where the facts of the case and the statutory factors support the continuance of the maintenance obligation in whole or in part, the failure or minimal efforts can be excused.

This resolution is consistent with the law as recognized in an earlier appellate decision in the *Heroy* case. Permanent maintenance has been found to be appropriate where “there is a discrepancy between her probable future income and the amount of income that would provide the standard of living she enjoyed while married” or “where a spouse has devoted significant time to raising a family in lieu of pursuing a career.”

In situations where a person is awarded permanent maintenance, even with substantial efforts and employment, that person may still fall short of having an ability to support him or herself.

While the affirmative obligation is alive and well, it is but one factor and may not be determinative given the particular facts and circumstances of a case.