In the Missouri Court of Appeals
Eastern District
DIVISION ONE

MICHAEL R. TAYLOR,	)	No. ED108724
	)	
Respondent,	)	
	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	Cause No. 1611-FC00388
	)	
ELAINE M. TAYLOR,	)	Honorable John P. Banas
	)	
Appellant.	)	Filed: April 6, 2021

I. Introduction

Elaine M. Taylor ("Wife") appeals the trial court's modified judgment and decree of dissolution dissolving the marriage of Wife and Michael R. Taylor ("Husband"). Wife asserts two points on appeal. First, Wife argues that the trial court erred in failing to follow the opinion and mandate ("*Taylor I*") issued by our Court by limiting the amount of Wife's maintenance award to $2,500 per month. In her second point on appeal, Wife contends the trial court erred in failing to dismiss with prejudice the claim for tortious interference with a business expectancy as instructed by our Court in *Taylor I.* We reverse and remand.

II. Factual and Procedural Background

Husband and Wife married in 1996 and had two children, aged thirteen and seventeen at the time of trial. The family resided in Foristell, Missouri. Husband filed for divorce in March of 2016.

Wife received her law degree from Washington University in 1992 and is a licensed attorney. However, she has not worked a full-time position since 1993 and has been the primary caretaker of the two children. During trial, Tim Kaver ("Kaver"), a vocational rehabilitation expert, who interviewed Wife and prepared a report, testified that:

> Wife is an experienced attorney who has worked part-time as a sole practitioner since 1995 in family, traffic, and bankruptcy law. Kaver further testified that Wife's last full-time employment was in 1993, when she worked as a tax department attorney for one year at a law firm earning between $30,000 and $40,000. In 2013, Wife's earnings were a net loss of - $4,622. In 2014, Wife earned an income of $204. Wife had no reported income for 2015 or 2016.
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> Kaver testified that he conducts job placement for approximately one attorney each year and that one percent of his firm's work involves placement for attorneys, Kaver concluded that Wife could most likely obtain a position within two to six months with a small- to mid-sized law firm earning between $70,785 and $107,910 annually. Kaver based his conclusions on labor market statistics provided by Robert Half Legal.

Taylor v. Taylor, 566 S.W.3d 641, 646 (Mo. App. E.D. 2018). Wife was not interviewed about her professional network capability. *Id*. Wife testified that her monthly expenses were $38,518.50 per month and sought maintenance of $6,000 per month, which she testified would supplement her income to help meet her reasonable needs after the sale of the marital home. *Id*. at 646–47. Wife provided that $12,650 of the monthly expenses went towards the care of six riding horses. *Id*. at 646.

The trial court awarded Wife non-modifiable maintenance of $2,500 per month, terminable upon the death of either party, the remarriage of Wife, or Husband's payment of monthly maintenance for thirty-six months. The trial court found that there was considerable and substantial evidence presented at trial that Wife would be self-supporting in less than the three-year term of maintenance.

Husband amended his action for dissolution of marriage to include a claim for tortious interference with a business expectancy. Specifically, Husband alleged that Wife interfered with his employment, which compromised Husband's employment, career, and business expectancy with his employer. Despite finding that Husband was not damaged as a result of Wife's actions, the trial court did not dismiss the tortious interference claim.

On appeal, our Court reversed and remanded the case to the trial court. *See id*. at 654–55. Our Court found that because the record lacked substantial evidence to support the trial court's maintenance award, the trial court abused its discretion in awarding Wife non-modifiable maintenance limited to thirty-six months. Our Court instructed the trial court to enter an order for modifiable maintenance, without the thirty-six-month limitation, and to review the amount of the the monthly maintenance award in light of the evidence presented and to reevaluate the facts in light of the § 452.335.2 factors.[1] Additionally, we ordered the trial court to enter judgment dismissing with prejudice Husband's Count II for tortious interference.[2]

The trial court entered an amended judgment and decree of dissolution on October 8, 2019. The trial court explained that Wife did not have household expenses since Husband was ordered to pay both mortgages on the marital residence and all of the utilities pertaining to the marital residence. Also, it found that "[s]ince [Husband] is ordered to pay child support[,]

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[1] All references are to Mo. Rev. Stat. Cum. Supp. 2016, unless otherwise stated.
[2] Specifically, the mandate stated that:

> [T]he judgment . . . [is] reversed in part as to the maintenance award and as to the judgment on Husband's Count II for tortious interference with a business expectancy, and the cause remanded to the aforesaid court with instructions to enter an award of modifiable maintenance, without the thirty-six month limitation, and to review the amount of monthly maintenance award in light of the evidence presented and to reevaluate the facts in light of the section 452.335.2 factors in determining the amount of monthly maintenance needed to close the gap between Wife's income and her monthly expenses, and to enter judgment dismissing with prejudice Husband's Count II for tortious interference in the Amended Petition for Dissolution, and be affirmed in all other respects in accordance with this Court's opinion delivered December 26, 2018.

[Wife's] expenses as to [the] children are found to be inflated. [Wife's] expenses as to charitable contributions, gifts, and horse expenses are not reasonable expenses." Wife was awarded $2,500 in modifiable maintenance, terminable upon the death of either spouse, the remarriage of Wife or by order of the trial court. The trial court did not dismiss the tortious interference claim.

This appeal follows.

III. Standard of Review

Our Court reviews the question of whether the trial court followed the mandate *de novo*. *Barden v. Barden*, 492 S.W.3d 641, 643 (Mo. App. E.D. 2016).

IV. Discussion

Point I

In her first point on appeal, Wife asserts the trial court erred in failing to follow the *Taylor I* opinion and mandate by limiting the amount of her maintenance to $2,500 per month because the trial court did not consider the factors in § 452.335.2(1)–(10). Wife argues that this award is insufficient for Wife to meet her reasonable needs, that the trial court speculated or failed to acknowledge her future reasonable needs, and the maintenance award required Wife to utilize her award of available marital assets and incur substantial debt to meet her reasonable needs and fulfill her obligations under the court order.

Analysis

On remand, the scope of the trial court's authority is defined by the appellate court's mandate, and all proceedings must be in accordance with the mandate. *Barden*, 492 S.W.3d at 643; *Smith v. Brown & Williamson Tobacco Corp*., 410 S.W.3d 623, 633 (Mo. banc 2013). "There are two types of remands: (1) a general remand, which does not provide specific direction and leaves all issues open to consideration in the new trial; and (2) a remand with directions, which requires the trial court to enter a judgment in conformity with the mandate." *State ex rel. St. Charles Cnty. v. Cunningham*, 401 S.W.3d 493, 495 (Mo. banc 2013). The appellate court's mandate and its opinion serve to instruct the trial court as to which type of remand has been ordered. *Smith*, 410 S.W.3d at 633. "Where, [as here,] the mandate contains express instructions that direct the trial court to take a specified action, the trial court has no authority to deviate from those instructions." *Guidry v. Charter Communications, Inc*., 308 S.W.3d 765, 768 (Mo. App. E.D. 2010). If the trial court acts contrary to those instructions, its act is considered null and void. *Id.* at 769.

In *Taylor I*, we reversed and remanded with specific instructions "to enter an order for modifiable maintenance, without the thirty-six month limitation, and to review the amount of the monthly maintenance award in light of the evidence presented." *Taylor*, 566 S.W.3d at 655. Specifically, we directed the trial court to "reevaluate the facts in light of the [§] 452.335.2 factors in determining the amount of monthly maintenance needed to close the gap between Wife's income and her monthly expenses." *Id*.

The trial court's amended judgment mirrored its initial judgment with the exception of bolded language in the introduction explaining the delay in entering the amended judgment and under the section "Maintenance." In awarding Wife a monthly maintenance of $2,500, the trial court considered that Wife did not have household expenses because Husband was ordered to pay both mortgages on the marital residence and all of the utilities. It also provided that "[Husband] has been ordered to pay [Wife] $2,634.00 as and for child support. Since [Husband] is ordered to pay child support[,] [Wife's] expenses as to [the] children are found to be inflated." The trial court also found that Wife's expenses for charitable contributions, gifts, and the horses are not reasonable expenses.

The judgment fails to demonstrate that the trial court considered the factors enumerated in § 452.335.2 in determining the amount of monthly maintenance. Instead, the trial court's amended judgment indicates that it considered the amount of child support Husband was ordered to pay in the calculation of maintenance. However, when the children's needs are not included in the spousal maintenance calculation, income received on behalf of the children, including child support, should not to be included in the calculation of maintenance. *Sullins v. Sullins*, 417 S.W.3d 878, 883 (Mo. App. E.D. 2014). Further, our Court provided in *Taylor I* that it was not persuaded that a monthly maintenance of $2,500 is sufficient to cover Wife's reasonable monthly expenses, even *excluding* the costs of caring for the household and horses, Husband's responsibility for property's mortgage and utilities, and child support—all of which the trial court provided it considered in its calculation of maintenance. *See Taylor*, 566 S.W.3d at 654–55. Most importantly, there is no indication that the trial court considered the factors since it failed to reference or discuss any of them. *See cf. L.R.M. v. R.K.M.*, 46 S.W.3d 24, 27 (Mo. App. E.D. 2001) (finding the trial court's maintenance award to wife was properly based on statutory factors, including standard of living established during marriage and marital property apportioned). While an award of maintenance is a matter within the sound discretion of the trial court, a trial court must consider the relevant factors set forth in § 452.335.2 to determine the amount and duration of the maintenance. *Id*. at 26; *Taylor*, 566 S.W.3d at 649. Because we cannot determine if the trial court considered the factors in § 452.335.2, as expressly instructed by our Court in *Taylor I*, we must remand to the trial court to enter a judgment in conformity with the mandate.

As noted in *Taylor I*, we acknowledge that the trial court did not make factual findings as to Wife's expenses; however, the trial court's judgment needed to reflect its reevaluation of the facts in light of the § 452.335.2 factors in determining the amount of monthly maintenance needed to close the gap between Wife's income and her monthly expenses. Accordingly, because the trial court did not enter a judgment in conformity with the mandate of *Taylor I*, we reverse and remand to the trial court for consideration of the factors set forth in § 452.335.2.

Point I is granted.

Point II

In her second point on appeal, Wife argues that the trial court erred in failing to dismiss with prejudice the claim for tortious interference with a business expectancy as instructed in *Taylor I*.

Analysis

The trial court's amended judgment did not dismiss Husband's claim for tortious interference with a business expectancy as instructed in *Taylor I*. However, while this appeal was pending, the trial court dismissed this claim with prejudice. Thus, Point II is dismissed at moot.

V. Conclusion

For the forgoing reasons, we reverse and remand for further proceedings consistent with this opinion and the mandate of *Taylor I*.

Colleen Dolan, P.J.

Robert M. Clayton III, J., concurs.
Kelly C. Broniec, J., concurs.