No. 2—10—0241
Order filed March 24, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
LAZARO LOPEZ,	)	of Du Page County.
	)	
Petitioner and	)	
Counterrespondent-Appellant,	)	
	)	
and	)	No. 09—D—2017
	)	
DIANE LOPEZ,	)	
	)	Honorable
Respondent and	)	Linda E. Davenport,
Counterpetitioner-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: The trial court did not err in rejecting petitioner's contention that respondent was in a *de facto* marriage with a third party and thus in awarding respondent maintenance; the relationship was short and, although respondent and the third party spent much time together, their activities, their personal affairs, and their conduct on vacations and holidays supported the court's conclusion.

Petitioner and counterrespondent, Lazaro Lopez, and respondent and counterpetitioner, Diane Lopez, were married on September 9, 1972. After 37 years of marriage and 8 years of living separate

and apart, Lazaro petitioned to dissolve the marriage.[1] In dissolving the marriage, the trial court awarded Diane maintenance. The court found that maintenance was proper because, among other things, the evidence failed to reveal that Diane was involved in a continuing conjugal relationship with another person. Lazaro timely appeals from the dissolution order, arguing that the trial court erred in finding that Diane was not engaged in a continuing conjugal relationship. We affirm.

The facts relevant to resolving this appeal are as follows. At trial, which took place in January and February 2010, Diane, who was 59 years old at that time, testified that, although she has taken some college classes, she has only a high school degree. In the beginning of the marriage, Diane worked as a secretary. Later, Diane ran a day care service out of her home.

In July 2009, Diane met John Boyle, a 74-year-old economist. When Diane met Boyle, she was living in an apartment in Woodridge. Diane left that apartment in the fall of 2009 and eventually moved into an apartment in Countryside. Before moving into the new apartment, Diane stayed with her parents, who live in Oak Lawn, or with Boyle at his apartment in Indian Head Park. When Diane stayed with Boyle, she slept in a spare bedroom he had. Once Diane moved into the new apartment, she did not stay there every night. Rather, Diane testified that, even after she moved into her Countryside apartment, she would stay with her parents or with Boyle.

When asked about Boyle, Diane testified that she and Boyle socialize and have a sexual relationship. Diane stated that she and Boyle go out to eat, dine with Boyle's friends, go to Naperville festivals, go to the movies, and go dancing together. When Diane and Boyle go out

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[1]Lazaro filed his petition to dissolve the marriage on September 24, 2009. Diane filed a counterpetition to dissolve the marriage on October 8, 2009. On the day of trial, Lazaro withdrew his petition, and the case proceeded on Diane's counterpetition

dancing, Diane dances with other men and Boyle dances with other women. In July 2009, shortly after Diane met Boyle, Boyle accompanied Diane to her cousin's wedding. Diane and Boyle, who met at a Fourth of July dance, went to a Labor Day dance and a New Year's Eve party. Diane and Boyle did not spend Christmas, Thanksgiving, or New Year's Day together, and they did not exchange Christmas presents. Diane admitted that she and Boyle were advised not to spend holidays together.

Additionally, Diane indicated that Boyle referred her to her attorney and has driven her to the emergency room, her attorney's office, and court. Boyle has helped Diane look for an apartment, prepare for the dissolution trial, look for a job, balance her checking account, prepare her tax returns, and sign the lease for the Countryside apartment.

Boyle has also paid a traffic ticket that Diane was issued and lent Diane money to pay for her numerous medications, gas, automobile repairs, rent, computer classes, and attorney fees. Diane gave Boyle promissory notes for the money he lent her, and the total amount of those notes is $5,984. Although Diane and Boyle socialize and Boyle has lent Diane money, Diane asserted that she has never given Boyle's address as her own, does not own any assets with Boyle, has not listed Boyle as a beneficiary on her life insurance policy, has no plans to marry Boyle, and is not in love with Boyle.

Rita Armstrong, a friend of Diane's who never met Boyle, testified that Diane talked about Boyle often. Diane told Armstrong that she and Boyle would go dancing, to the movies, and out to eat with Boyle's friends. Diane also told Armstrong that Boyle "rocked her world." Armstrong took this to mean that Diane and Boyle had a sexual relationship. Armstrong testified that Diane spent

five or six nights per week with Boyle and that, when asked where she was staying, Diane would reply, "where else would I be, [but] John's."

Laura Lopez, Diane's and Lazaro's daughter, testified that she talked with Diane in the summer of 2009 about Diane babysitting Laura's daughter, Hannah. Diane told Laura that she did not want to babysit Hannah, because she "wanted to start her new life." Laura admitted on cross-examination that she was angry with Diane, because Diane was continuing with the dissolution proceedings.

Will Major, a private investigator, testified that he was asked to investigate the residency of Susan Lopez. When Major was asked if he meant Diane Lopez, he noted his mistake. In his investigation, Major went to Diane's apartment on January 20, 2010, at approximately 6:50 a.m. While there, he did not see Diane's car parked in the parking lot. Major proceeded to Diane's apartment and knocked on the door. No one answered. After that, Major went to Boyle's apartment. At approximately 7:25 a.m., he saw Diane's car parked in the parking lot at Boyle's apartment. Major repeated this process at 8 p.m. that night, finding that Diane was not at her apartment and that her car was again parked in the parking lot of Boyle's apartment complex. On January 24, 2010, Major went to Diane's apartment at 6:50 a.m., noticed that her car was not parked in the apartment's parking lot, and received no answer when he knocked on the door to Diane's apartment. At approximately 8:30 a.m. that morning, Major went to Boyle's apartment to serve him with a subpoena. At that time, Major noticed that Diane's car was parked in the lot. Major proceeded to Boyle's apartment, knocked on the door, and heard a woman inform Boyle that there was someone at the door. When Boyle opened the door, Major saw that Boyle was naked from the waist up, but

Major could not see the bottom half of Boyle's body. Major also never saw Diane at Boyle's and never saw the woman whose voice he heard when he knocked on the door.

Lazaro testified that Diane told him about Boyle. That is, Diane advised Lazaro that she went dancing with a dancing partner and had dinner with him. Lazaro did not believe that he should have to pay Diane maintenance, because Diane told him that she "didn't need money from [Lazaro], that she had another life, and [that] she was moving on."

In dissolving Diane's and Lazaro's marriage, the trial court awarded Diane permanent modifiable maintenance of $3,000 per month. The court rejected Lazaro's allegation that Diane should receive no maintenance because she had a continuing conjugal relationship with Boyle. The court reached this conclusion after finding Armstrong, Laura, and Major incredible.

At issue in this appeal is whether the trial court erred in awarding Diane maintenance. More specifically, we are asked to consider whether the evidence presented at trial established that Diane and Boyle had a continuing conjugal relationship such that Diane had no need for support from Lazaro.

In awarding maintenance, courts consider numerous factors delineated in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2008)). Although section 504(a) does not specify that the court may consider whether the spouse seeking maintenance is in a continuing conjugal relationship, the last factor allows the court to consider "any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a)(12) (West 2008). Here, in determining whether Diane was entitled to maintenance, the trial court considered, pursuant to section 504(a)(12), whether Diane was involved in a continuing conjugal relationship with Boyle.

That said, we next must address what standard of review applies here. Lazaro has failed to indicate under what standard this court should review his claim.[2] Diane, citing *In re Marriage of Caradonna*, 197 Ill. App. 3d 155, 159 (1990), contends that we must review under a manifest-weight standard the court's decision that she and Boyle were not engaged in a continuing conjugal relationship. *Caradonna* concerns a petition to terminate maintenance postdissolution. See 750 ILCS 5/510(c) (West 2008) (noting that an obligation to pay future maintenance is terminated once, among other things, the spouse receiving maintenance engages in a continuing conjugal relationship with another person). This case is not before us on a petition to terminate maintenance. Rather, here, Lazaro has appealed from the *award* of maintenance. We review an award of maintenance under an abuse-of-discretion standard. See *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998); see also *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 167 (2005). Although we see valid arguments for employing either standard of review, deciding what standard of review should apply here is not necessary, because, under either standard of review, we determine that the trial court did not err in awarding Diane maintenance despite her relationship with Boyle.

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[2]Although Lazaro indicates in his reply brief that a manifest weight-of-the-evidence standard should apply, he cites no authority for why that standard of review should apply and mentions no standard of review in his initial brief. This is a clear violation of Illinois Supreme Court Rule 341(h)(3) (eff. Sept. 1, 2006). *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 176 (2004). Although our supreme court rules are mandatory and a party's brief may be stricken for the failure to comply with these rules (see *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008)), we nevertheless will consider Lazaro's claim. See *Dargis*, 354 Ill. App. 3d at 176.

Turning to the substance of this appeal, the party claiming that an ex-spouse should not receive maintenance has the burden of proving that the recipient ex-spouse is involved in a *de facto* husband-and-wife relationship with a third party. *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929 (2006); *In re Marriage of Lambdin*, 245 Ill. App. 3d 797, 801 (1993).[3] "In determining whether that burden has been met, courts look to the totality of the circumstances and consider the following factors: '(1) the length of the relationship; (2) the amount of time the couple spends together; (3) the nature of activities engaged in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together.' " *Susan*, 367 Ill. App. 3d at 929 (quoting *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 189 (2004)).

Applying those factors supports the conclusion that Diane and Boyle were not involved in a continuing conjugal relationship. First, the evidence revealed that Diane met Boyle in the beginning of July 2009 and continued to spend time with him until the time of trial, *i.e.*, the first part of 2010. The total length of the parties' relationship was just over seven months. This, in contrast to Lazaro's view, is not a significant amount of time. See *Sunday*, 354 Ill. App. 3d at 189-90 (noting that, in general, a relationship lasting a few years is of a significant duration for purposes of finding a *de facto* marriage).

Second, the evidence established that Diane and Boyle do spend a lot of time together. In addition to staying together overnight on occasion, Diane and Boyle go out dancing, out to eat, to

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[3]Even though we noted that this case is procedurally different from the myriad cases where maintenance is terminated postdissolution when the evidence reveals that the spouse receiving maintenance is involved in a continuing conjugal relationship, we nevertheless find those cases instructive.

the movies, and to neighborhood festivals. Also, Diane brought Boyle with her to her cousin's wedding. However, while the amount of time that Diane and Boyle spend together arguably weighs in favor of a *de facto* marriage, the third factor does not.

That is, although Diane and Boyle spend a lot of time together, the nature of the activities in which they engage does not indicate that they are involved in a continuing conjugal relationship. For example, when they would go out to dinner, they would often dine with Boyle's friends. When the couple went dancing, Diane would dance with other men and Boyle would dance with other women. On those occasions when Diane slept over at Boyle's apartment, Diane indicated that she slept in a spare bedroom. Further, while it is true that Boyle helped Diane with household matters that a husband would generally help a wife with, such as helping Diane prepare her taxes and balance her checking account, the evidence reflected that he did so because he is an economist while Diane has only a high school degree and suffers from migraines and other ailments. See *id*. at 190-91 (court must look at reason behind why the spouse receiving maintenance acted the way she did and not merely at the fact that her actions satisfied one of the six factors). Finally, although Diane and Boyle have a sexual relationship, that fact is entitled to minimal weight. See *In re Marriage of Sappington*, 106 Ill. 2d 456, 467 (1985) ("[I]t is the husband-and-wife-like relationship which bears the rational relationship to the need for support, not the absence or presence of sexual intercourse.").

Fourth, nothing presented at trial revealed that the personal affairs of Diane and Boyle are interrelated. Although Boyle has paid ancillary expenses that Diane has incurred, such as her traffic ticket, he expects to be repaid for all the other money he lent her. Moreover, Diane testified that she has never given Boyle's address as her own, she and Boyle do not own any assets together, and Boyle is not a beneficiary on her life insurance policy. The absence of any facts indicating that

Diane's and Boyle's personal affairs are interrelated weighs heavily against finding that Diane and Boyle are engaged in a continuing conjugal relationship. *Sunday*, 354 Ill. App. 3d at 192-93.

Likewise, the final factors, which concern vacations and holidays, weigh against finding a continuing conjugal relationship. Specifically, as Lazaro recognizes, nothing in the record established that Diane and Boyle vacationed together. Regarding holidays, although Diane and Boyle spent some of the holidays together, the time they spent together on such occasions can hardly be considered intimate. Rather, when they spent holidays together, they did so at parties and dances, where both Diane and Boyle would dance with other people. Such acts are inconsistent with those of a couple engaged in a conjugal relationship. See *id.* at 191 (noting that ex-wife and her alleged paramour "engaged in activities expected in a conjugal relationship, but not with the frequency expected or required in such a relationship"). Moreover, while Diane and Boyle celebrated the Fourth of July, Labor Day, and New Year's Eve together, they did not get together for Thanksgiving, Christmas, or New Year's Day. The fact that Diane was advised not to spend holidays with Boyle is of little significance, as the record does not indicate from whom this advice came or for what purpose it was given. Because only one of the six applicable factors has clearly been met, we cannot conclude that the trial court erred when it awarded Diane maintenance despite her relationship with Boyle. See *id.* at 192-93.

Lazaro urges us to consider the testimony of Armstrong, Laura, and Major, which he says support a different conclusion. We disagree. First, as noted, the trial court found the testimony of these witnesses incredible, and we cannot reweigh the trial court's credibility determinations. See *People v. Sven*, 365 Ill. App. 3d 226, 241-42 (2006). Second, even if we could reweigh the trial court's credibility determinations, the testimony of Armstrong, Laura, and Major did not show that

Diane and Boyle had a continuing conjugal relationship. Rather, their testimony confirmed Diane's testimony that she spends time with Boyle, has a sexual relationship with Boyle, and sleeps over at his apartment. The fact that Diane has indicated to Armstrong and Laura, as well as Lazaro, that she wants to start a new life does nothing to alter our view, as the mere fact that Diane wants to start anew does not mean that she wants Boyle to be a part of that. Indeed, the uncontradicted testimony reveals that Boyle will not be a part of Diane's new life in any meaningful way, as Diane has no plans to marry Boyle and is not in love with him.

As a final matter, we note that Lazaro goes to great lengths to argue that "[t]he Countryside apartment lease was a ruse." That is, Lazaro claims that, even though Diane had this apartment, the evidence revealed that she was not living there, such that awarding Diane maintenance was improper. Lazaro cites no authority for his contention that the mere fact that an ex-spouse does not spend a significant amount of time in her own abode warrants a conclusion that the ex-spouse is engaged in a continuing conjugal relationship with another person. As such, we find his argument forfeited. See *County of McHenry v. Thoma*, 317 Ill. App. 3d 892, 892 (2000) ("[A] reviewing court is not a repository into which the appellant can dump the burden of research."); see also *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991) ("[A]rguments inadequately presented on appeal are waived" and "[s]tatements unsupported by argument or citation of relevant authority do not merit consideration on review.").

For these reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.