

foundation for his motion to terminate or modify maintenance, arguing that the events amounted to a substantial change of circumstances, as contemplated by section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/510(a-5) (West 2008)).

On appeal, we are asked to review two issues. First, we must determine whether the statutory provisions allowing a termination and/or modification of maintenance can override a contractually agreed-to maintenance award. Second, we are asked to determine whether the trial court abused its discretion by modifying and terminating portions of the maintenance award and in denying Deborah's enforcement petition.

We conclude that because the marital settlement agreement was merged into the judgment of dissolution and no express language barred a modification, a modification and/or termination on the basis of a substantial change of circumstances is allowable. However, the trial court abused its discretion in the amount of the maintenance reduction because the record reflects that all the relevant factors were not properly considered.

FACTS

Deborah and Douglas were married in 1977. They had one child, who is now an adult. Throughout portions of the marriage, Deborah did not work and was a homemaker. Douglas was the economic provider. The parties were divorced on September 14, 2005. The judgment of dissolution incorporated a marital settlement agreement that included a provision for maintenance. That section is reproduced here as follows:

"Maintenance: Defendant shall pay to Plaintiff as and for permanent maintenance the sum of \$1,400 per month commencing July, 2005. In addition thereto, Defendant shall pay to Plaintiff the sum of \$40,000 on or before March 31st of each year commencing March 31, 2006. In the event maintenance terminates, as more specifically set forth below, Defendant shall pay to Plaintiff the pro-rata portion

of the annual installment from March 31st of said year until the date of termination.

In addition thereto, Defendant shall pay to Plaintiff the additional sum of \$1,000 per month commencing July[] 2005 for 12 months ONLY. Said additional sum shall terminate with the 12th installment in June[] 2006.

Defendant's obligations under paragraphs 7(d) and 7(e) hereunder shall terminate upon the occurrence of any of the mandatory terminating events set forth in Section 510(c) of the IMDMA."

In addition to the maintenance, Douglas had health insurance obligations in regards to Deborah's coverage. He agreed to pay the cost of her COBRA coverage in full for a period of 36 months. After the 36-month period, he was to pay Deborah either \$300 per month or one-half of the cost of Deborah's monthly health insurance premium—whichever amount was less. This health insurance obligation terminated upon the occurrence of one of the following three events: if maintenance was terminated for a reason included in section 510(c) of the Act (750 ILCS 5/510(c) (West 2008)), after the passage of eight years from the commencement of the first COBRA payment, or upon Deborah's eligibility for comparable group health coverage through an employer.

At the time of the divorce, Douglas was employed as the manager of the mutual funds operation for A.G. Edwards. Between base salary and bonuses awarded, Douglas's gross income in 2005 was \$307,606. That dollar amount gradually increased, and by 2008, Douglas's W-2s for the year reflected income of approximately \$400,000. Of this total income each year, the majority did not come from salary but from a March annual bonus.

Upon the takeover of A.G. Edwards by Wachovia, Douglas's employment situation changed. At first, he was informed by Wachovia that he would not have future employment, but later he was offered the position of senior relationship manager. From 2008 to 2009, due to this change of ownership and employment position, Douglas's income fell by 75%. His

salary with Wachovia was \$98,000, and his annual bonus was only \$5,000.

According to the mathematical calculations Douglas's attorneys presented to the court, after the change of jobs, the maintenance and health insurance obligation payments he was making to Deborah amounted to 59% of his gross income.

Douglas continued to pay the monthly maintenance amount of \$1,400 pursuant to the agreement. However, in 2009, Douglas failed to make the \$40,000 annual maintenance payment.

On November 14, 2008, Douglas filed a motion to terminate or modify his maintenance obligations. In this petition, Douglas claimed that there had been a substantial change in circumstances that should justify the termination and/or modification of maintenance. The two substantial changes in circumstances were the reduction of his former A.G. Edwards salary by his new employer Wachovia and the fact that Deborah was "gainfully employed and well able to contribute to her own support."

Deborah filed a response to this petition, indicating that none of the statutory events that would result in a mandatory change of maintenance had taken place and that her employment as a nail technician had been contemplated by the parties at the time of the entry of the marital settlement agreement. In fact, Deborah stated that the amounts of money she was earning from this employment amounted to less than what had been discussed and anticipated by the parties at the time of the agreement.

In April of 2009, Deborah filed a petition with the trial court to enforce the agreement or alternatively to show cause. Deborah claimed that Douglas maintained the ability to pay the \$40,000 maintenance installment which was due in March of 2009. Douglas responded that he did not have the ability to pay the annual March maintenance installment.

After a hearing, the trial court denied this petition and found that Douglas was not in violation of any terms of the judgment of dissolution because the parties had contemplated

that this \$40,000 annual payment was to come from his March annual bonus, and not from assets in general. The December 7, 2009, order specifically required Douglas to continue paying \$300 per month towards Deborah's health insurance coverage. The court reduced Douglas's monthly maintenance from \$1,400 per month to \$500 per month. The court terminated Douglas's annual maintenance payment of \$40,000 that had been due in March 2009 and any subsequent lump-sum payments originally required in the maintenance agreement.

Deborah's posttrial motion was denied, but Douglas was ordered to provide Deborah with copies of his income tax returns for the next five years.

Deborah appeals.

ISSUES

Deborah argues that the trial court erred in terminating the annual installment of maintenance and in the reduction of the other monthly maintenance amount. Secondly, Deborah contends that the trial court's denial of her attempt to enforce the March 2009 \$40,000 maintenance payment was also erroneous.

Maintenance Termination and Modification

As referenced in the parties' marital settlement agreement, section 510(c) of the Act addresses the events that can trigger a modification or termination of maintenance:

"Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis." 750 ILCS 5/510(c) (West 2008).

Despite the fact that none of those events were at issue in this case, Douglas argues that the maintenance agreement should be changed because there has been a substantial change in

circumstances relative to his employment compensation and also that Deborah is now gainfully employed. See 750 ILCS 5/510(a-5)(1), (a-5)(7) (West 2008).

Deborah contends that the terms of the marital settlement agreement, coupled with section 502(f) of the Act, preclude a modification to the terms of the contract. Section 502 deals with marital settlement agreements. Maintenance terms upon which the parties agree are binding on the court "unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable." 750 ILCS 5/502(b) (West 2008). The terms of the agreement should be set forth in the judgment. 750 ILCS 5/502(d) (West 2008). Subsection (f) of section 502 states as follows:

"Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment." 750 ILCS 5/502(f) (West 2008).

The statute outlines the method by which the parties may expressly limit the modification and/or termination of maintenance. The limiting language must be included in both the agreement and the judgment. If the marital settlement agreement is not incorporated into the judgment of dissolution of marriage, then the maintenance provision within the agreement cannot be modified—even if there has been a substantial change of circumstances. See *In re Marriage of Dellitt*, 213 Ill. App. 3d 155, 158, 571 N.E.2d 523, 525 (1991). Section 502 of the Act gives the option to incorporate the marital settlement agreement into the judgment. Upon the incorporation of the settlement terms into the judgment, the contract merges into the judgment of dissolution. *Lamp v. Lamp*, 81 Ill. 2d 364, 370, 410 N.E.2d 31, 34 (1980) (citing *Herrick v. Herrick*, 319 Ill. 146, 152-53, 149 N.E. 820, 823-24 (1925)).

Once the contract is merged into the judgment, the judgment is modifiable because the statutory ability to modify the judgment became a part of the agreement. *Id.*

We turn to the judgment of dissolution in this case. In an initial order in the court file dated June 28, 2005, the court found that grounds for divorce existed. The court stated, "Parties have reached a M.S.A. [marital settlement agreement], which the court finds not to be unconscionable." The court further explained, "Formal Judgment incorporating the MSA [is] to follow." The order incorporating the language and terms of the marital settlement agreement was also entered on June 28, 2005. Thereafter, the parties divided the assets as contemplated by the order, and a written order restating the terms of the June 28, 2005, order and stating the exact investment division was entered on September 14, 2005.

Deborah argues that the following language of the marital settlement agreement, incorporated into the judgment of dissolution, is important:

"Defendant's obligations under paragraphs 1–4 [maintenance and health insurance], above, shall terminate upon the occurrence of any of the mandatory terminating events set forth in Section 510(c) of the IMDMA."¹

In keeping with contractual interpretation law, she requests a strict consideration of the plain language used by the parties to this agreement. From the plain language used, Deborah argues that she and Douglas never intended that there could be a modification or termination on the basis of a substantial change of circumstances. Deborah contends that maintenance could only be terminated or modified upon the occurrence of one of the events set forth in section 510(c), *i.e.*, if either party died or if she remarried or cohabitated with another partner on a continuous and conjugal basis. Deborah wants us to conclude that by omitting any

¹The paragraphs are numbered differently in the marital settlement agreement and the June 28, 2005, judgment entered by the court, although they involve the identical subject matter.

reference to the modification or termination of maintenance due to a substantial change of circumstances, the Dressels intended that a substantial change of circumstances would simply be an irrelevant occurrence.

Douglas cites contrary case law holding that if a substantial change of circumstances occurs, a modification or termination is allowable even if that possibility is not specifically addressed in the written agreement. Deborah counters that the cases Douglas cites are no longer valid because those cases were decided prior to the statutory modification that took effect on January 1, 2004, which added subsection (a-5) to section 510.

Overall, we find Deborah's arguments to be unpersuasive. The amendment that took effect on January 1, 2004, simply removed from subsection (a) the reference to a substantial change of circumstances and created the new subsection (a-5) which expanded upon the topic and spelled out the nine factors that a court presented with a petition to modify should consider in reaching its decision. The earlier version of the statute provided no specific guidance on which factors to consider. The 2004 amendment did not change the ability of the court to enter an order modifying or terminating maintenance because of a substantial change in circumstances. We do not agree with Deborah's argument that case law predating the 2004 statutory amendment is invalid. A modification because of a substantial change in circumstances was allowed before and after the amendment. The amendment merely served to provide guidance and specific factors for the court to consider.

We turn to the cases cited by Douglas. In *Lamp v. Lamp*, the wife contended that the judgment of dissolution award of the home to her until the youngest child reached majority was a part of the property settlement and could not be modified despite a substantial change in circumstances. *Lamp*, 81 Ill. 2d at 368, 410 N.E.2d at 32. The court found that the temporary possession of the marital home was akin to a provision for monetary support for the benefit of the children and therefore modifiable where the children were living with the

father and he was providing their support. *Lamp*, 81 Ill. 2d at 368, 377, 410 N.E.2d at 33, 37. While the facts in *Lamp* are readily distinguishable from those in the case before us, the supreme court in *Lamp* did reaffirm past case law that established the court's statutory power to reduce the amount of periodic payments, whether child support or alimony, despite a settlement agreement between the parties which fixes the amount of those payments and which is then incorporated into the judgment. *Lamp*, 81 Ill. 2d at 369, 410 N.E.2d at 33.

More recently, in the case of *In re Marriage of Martino*, 166 Ill. App. 3d 692, 520 N.E.2d 1139 (1988), the husband filed a petition to modify or terminate maintenance payments. *In re Marriage of Martino*, 166 Ill. App. 3d at 694, 520 N.E.2d at 1141. One of the issues on appeal was the wife's contention that the trial court erred in terminating her ex-husband's obligation to provide housing. The basis of the termination was that the housing award was similar in character to maintenance and thus could be modified or terminated. *In re Marriage of Martino*, 166 Ill. App. 3d at 696, 520 N.E.2d at 1142. The appellate court agreed with this determination, noting that while property settlements are typically not modifiable or revocable, provisions requiring future maintenance payments can be modified upon a showing of a substantial change of circumstances. *Id.* The marital settlement agreement in *In re Marriage of Martino* provided that after the Martinos' daughter turned 19 years of age, John Martino had a continuing obligation to provide a residence for Karen Martino for a single occupant. *Id.* The appellate court reasoned that because there was no definite end to this housing requirement, the housing award was not in the nature of a property award but was a form of maintenance. As a type of maintenance, despite the provision in the agreement that required an indefinite housing allowance, that term was modifiable. *In re Marriage of Martino*, 166 Ill. App. 3d at 696-97, 520 N.E.2d at 1142. Karen Martino also argued on appeal that the trial court erred in modifying her maintenance award because the settlement agreement precluded a modification. *In re Marriage of*

Martino, 166 Ill. App. 3d at 697, 520 N.E.2d at 1143. John Martino claimed that the maintenance award remained modifiable in the event of a substantial change in circumstances. *Id.* The court stated, "Once an agreement is incorporated into a judgment, it loses its contractual nature, and the court's power to modify an award of maintenance is thereafter governed by statute." *Id.* The court stated that the agreement was modifiable absent specific language barring any future modification. *Id.* (citing Ill. Rev. Stat. 1985, ch. 40, par. 502(f), and *Potocki v. Potocki*, 98 Ill. App. 3d 501, 503, 424 N.E.2d 714, 716 (1981)).

In *In re Marriage of Brent*, 263 Ill. App. 3d 916, 635 N.E.2d 1382 (1994), the ex-husband's petition to modify his maintenance obligations was denied by the trial court. *In re Marriage of Brent*, 263 Ill. App. 3d at 918, 635 N.E.2d at 1384. When their marriage was dissolved, the parties entered into a settlement agreement regarding maintenance that was later incorporated into the judgment. *In re Marriage of Brent*, 263 Ill. App. 3d at 919, 635 N.E.2d at 1384. The settlement agreement provided that maintenance could never be increased but could be decreased should the ex-wife become employed. *Id.* On appeal, the ex-husband argued that the trial court erred in disallowing a reduction of the maintenance amount because the ex-wife had not secured employment. *In re Marriage of Brent*, 263 Ill. App. 3d at 921, 635 N.E.2d at 1386. The court noted that the Illinois legislature allowed certain conditions upon which maintenance could be modified or terminated. *Id.* The appellate court indicated that this case presented the question of whether the provisions of the settlement agreement regarding a modification of maintenance operated as an addition to the statutory grounds that support a modification or whether the provisions operated as a limitation on the statutory grounds. *Id.* The court found that had the Brents not entered into a settlement agreement which contained a provision limiting a maintenance modification, the court would be empowered to modify the original award if it found that the ex-husband

proved a substantial change of circumstances. *In re Marriage of Brent*, 263 Ill. App. 3d at 922, 635 N.E.2d at 1386. The court found that it could not determine whether the parties intended the income-connected basis for a maintenance reduction to be the exclusive reason for reducing maintenance or whether it was an additional ground for a reduction of maintenance. *In re Marriage of Brent*, 263 Ill. App. 3d at 923, 635 N.E.2d at 1387. The court concluded that the language used by the parties was not an "express preclusion of modification" and that therefore "the court retains its authority to modify maintenance." *In re Marriage of Brent*, 263 Ill. App. 3d at 925, 635 N.E.2d at 1388. The court found that the language utilized by the parties was meant to be in addition to the statutory basis for a reduction of maintenance—and remanded the case to the trial court for a determination of whether the ex-husband had established a substantial change of circumstances warranting a reduction in the maintenance amount. *In re Marriage of Brent*, 263 Ill. App. 3d at 925-27, 635 N.E.2d at 1388-89.

We turn to the facts of this case. The Dressels' marital settlement agreement was incorporated into the judgment. The trial court found the terms of the agreement to be appropriate and conscionable. Deborah argues that the provision of the judgment and agreement that called for a termination upon the occurrence of any of the mandatory terminating events in section 510(c) of the Act barred the court's ability to modify or terminate maintenance unless one of those events occurred. We find that the case law simply does not support Deborah's position. Nor does the use of the term "permanent maintenance" strengthen her position. See *In re Marriage of Martino*, 166 Ill. App. 3d at 698, 520 N.E.2d at 1143 (citing *Schoenhard v. Schoenhard*, 74 Ill. App. 3d 296, 300, 392 N.E.2d 764, 767 (1979)). Where specific language is absent restricting a modification, the fact that Deborah bargained for maintenance does not affect the court's ability to modify the agreement. *Id.* An agreement loses its contractual nature once it is incorporated into the judgment, giving

the court the power to modify an award of maintenance pursuant to statute. We do not find that the language used by the parties expressly bars any future modification. Consequently, the trial court's conclusion that it could apply the statutory basis for a reduction of maintenance was correct.

We next turn to the trial court's decision that Douglas established a substantial change in circumstances that warranted a termination and a reduction of the different types of maintenance payments. These factual conclusions are subject to an abuse-of-discretion standard of review. *In re Marriage of Hart*, 194 Ill. App. 3d 839, 851, 551 N.E.2d 737, 744 (1990).

Sections 504(a) and 510(a-5) of the Act set forth factors that must be considered by the trial court when maintenance is being reviewed. The factors included in section 504(a) are as follows:

1. The income and property of each party.
2. The needs of each party.
3. The present and future earning capacities of each party.
4. Any impairment of the present and future earning capacity due to the time spent by the party seeking maintenance to domestic duties that resulted in a delay or forbearance of education or career opportunities.
5. The time necessary to enable the party seeking maintenance to acquire appropriate education.
6. The standard of living established during the marriage.
7. The duration of the marriage.
8. The age, physical, and emotional condition of both parties.
9. The tax consequences of the property division.
10. Contributions and services of the party seeking maintenance to the education

or career of the other party.

11. Any agreement between the parties.

12. Any other factor that the court expressly finds to be just and equitable.

750 ILCS 5/504(a) (West 2008). Section 510 of the Act addresses the modification and termination of maintenance. Section 510(a-5) of the Act states that in addition to the section 504(a) factors considered with an initial maintenance order, on review, the court should also consider the following factors:

1. Any change in the employment status of either party and whether the change was made in good faith.
2. The efforts made by the party receiving maintenance to become self-supporting and the reasonableness of the efforts made.
3. Any impairment of the present and future earning capacity of either party.
4. The tax consequences of the maintenance payments upon the economic circumstances of the parties.
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 in the original judgment and the present status of the property.
7. The increase or decrease in each party's income since the original judgment.
8. The property acquired and currently owned by each party after the entry of the judgment.
9. Any other factor that the court expressly finds to be just and equitable.

750 ILCS 5/510(a-5) (West 2008).

The order entered by the trial court on December 7, 2009, references a consideration of some of the factors in determining that a substantial change in circumstances occurred

which warranted a modification in the maintenance obligation. The court largely focused on Douglas's substantial reduction in income—he went from earning \$401,000 in 2008 to \$103,000 in 2009. The court concluded that Douglas did not have the ability to pay maintenance in the amounts initially established in 2005. The court determined that Douglas bore no role in the reduction of his income. The court noted the lack of income generated by Deborah as a nail technician. Furthermore, the trial court considered the current value of the investment accounts in each parties' control—Deborah with \$850,000 and Douglas with \$1 million. However, apart from addressing the above issues, the order contained no specific findings supporting Douglas's inability to continue the maintenance payments.

In reviewing the record, we believe that several factors set forth in sections 504(a) and 510(a-5) were not given proper consideration by the court in making its determination. We address those now.

The court took issue with Deborah's employment efforts, and therefore, we review that issue. The court referenced that Deborah completed her education and training as a nail technician as contemplated by the parties in the judgment of dissolution of marriage. The court noted that she had not yet earned any income from 2006 until mid-2009, and it stated that her "continued desire to work as a nail technician is not reasonable and is not a reasonable attempt toward self-sufficiency." The record reflects that when the judgment of dissolution was entered, Deborah was not employed. The maintenance amounts agreed to by the parties in 2005 presumably took her future income as a nail technician into account. While Douglas did not call into question Deborah's career choice as a factor supporting his petition to modify maintenance, he did allege that Deborah was "gainfully employed and well able to contribute to her own support."

At the time of the 2005 settlement, Deborah was 47 years of age and unemployed. The divorce occurred after a 28-year marriage. Up until 2000, Deborah worked

intermittently in several low-paying jobs that contributed a nominal amount of money towards the family's income. A mutual decision made by the Dressels in 1994 allowed Deborah to discontinue her employment at AT&T, where she had been a clipboard operator. Deborah later took a job as a disciplinary assistant with Belleville School District 118. Thereafter, Deborah became a teacher's aide for seventh- and eighth-grade behaviorally disordered students with the district, at a salary of \$12,000 a year. Accepting the job with Belleville School District 118 allowed Deborah to work and still have a year-round schedule that mirrored that of her son's school schedule. Ultimately, after enduring the behavioral issues of these students, including physical assaults, Deborah left her teacher's aide position. This decision was also a mutual decision. From 2000 on, Deborah had little to no income.

When the parties divorced, Deborah expressed a desire to obtain training for and pursue a career as a nail technician. At the time of the modification hearing, Deborah was losing money as a nail technician and had begun the process of attempting to locate alternate employment. Her gross income at the time of the hearing was only \$384.45 per month, with \$531.26 in expenses each month. At the time of the divorce, Deborah anticipated that by 2009 she would be earning somewhere between \$7,500 and \$12,000 per year as a nail technician. Although Deborah never achieved any sort of positive income as a nail technician, she did not petition for additional maintenance. A review of Deborah's career choices and her monetary difficulties at making a living in this field is important in a consideration of the modification petition. While an attempt at self-sufficiency is a relevant factor to be considered, in this case the maintenance amounts were established at a time when Deborah made no income. While Deborah's career as a nail technician might have been ill-conceived, she did make an attempt to derive income from this venture. Additionally, the parties and the court contemplated Deborah's pursuit of a career as a nail technician in setting the maintenance award in 2005. The trial court's focus on Deborah's current lack of income

production as a nail technician is not in keeping with the history of this case and the intent of the parties at the time of the 2005 settlement.

The record reflects that throughout their marriage the income disparity between Douglas and Deborah has been significant. Douglas was always the primary wage earner, and Deborah's income was nominal and centered around family and child-rearing commitments. What kind of jobs Deborah would accept and when were family decisions. The record reflects that Deborah was last employed in 2000 as a teacher's aide for behaviorally disordered students, earning \$12,000 annually. The decision to leave that job was also a family decision. Deborah should not be penalized by the court because of mutual family-based decisions. See *In re Marriage of Keip*, 332 Ill. App. 3d 876, 881, 773 N.E.2d 1227, 1231 (2002). Throughout their marriage, Douglas was able to develop marketable skills that still serve him well. While the unfortunate downturn in his earning capacity was substantial, the fact that he is still earning a six-figure salary affords him a comfortable lifestyle. On the other hand, Deborah's present and future earning outlook is bleak. There is no indication in the record that Deborah has any education beyond high school or any transferable skills or training. At the time of the modification hearing, Deborah was 51 years old. The prospect of Deborah earning anything other than minimum wage is unlikely and unrealistic.

The court's order states, "Each party has available to them substantial funds for their maintenance and support." As stated in *In re Marriage of Keip*, "Illinois law is clear that one is not required to liquidate assets in order to generate income to live on." *In re Marriage of Keip*, 332 Ill. App. 3d at 882, 773 N.E.2d at 1232 (citing *In re Marriage of Emery*, 179 Ill. App. 3d 744, 750-51, 534 N.E.2d 1014, 1018 (1989)). It is true that both parties had considerable assets at the time of the hearing—Deborah had \$850,000 and Douglas had \$1 million. However, what is also clear is that Douglas continues to have a future earning

capacity at a much greater level than Deborah. While Douglas has the opportunity to continue to accumulate wealth, Deborah, by virtue of her age, lack of education, and training, will be relegated to minimum-wage type of jobs. It would therefore be necessary for Deborah to indefinitely live off of the assets that were awarded in the division of property, which she should not be required to do. See *id.*

Having examined the relevant statutory factors, we examine the court's order on a mathematical basis and an economic basis.

The court reduced the amount of Deborah's monthly maintenance from \$1,400 per month (\$16,800 annually) to \$500 per month (\$6,000 annually) on the basis of the same substantial change of circumstances.

At the time of the marital settlement agreement, the annual maintenance paid by Douglas to Deborah was \$56,800, consisting of the annual lump sum of \$40,000 plus the \$16,800 paid annually in monthly installments. Mathematically, the \$56,800 per year amounted to 18.5% of Douglas's gross income. As Douglas's gross income increased in subsequent years, that percentage obviously decreased. The trial court's termination of the annual \$40,000 payment and modification of the monthly amount from \$1,400 to \$500 substantially reduced the percentage of income Douglas was required to pay. The new maintenance order required Douglas to pay just 5.8% of his current gross income—a percentage decrease of 12.7%.

In light of the fact that Deborah was making no income of her own at the time that the modification petition was filed, a reduction of the maintenance award from \$56,800 per year to just \$6,000 per year is inappropriate. As noted in *In re Marriage of Keip*, "A balance must be achieved between providing maintenance as an incentive *** to attempt to achieve self-sufficiency and a 'realistic appraisal' of whether such self-sufficiency is even possible under these circumstances." *In re Marriage of Keip*, 332 Ill. App. 3d at 883, 773 N.E.2d at 1233

(citing *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 972-73, 677 N.E.2d 463, 466-67 (1997)). The disparity in income is \$103,000 per year. The resulting \$6,000 in maintenance after the trial court's reduction is not likely to even allow Deborah "to meet her needs in any marginal way." (*In re Marriage of Keip*, 332 Ill. App. 3d at 880, 773 N.E.2d at 1230-31). Given Deborah's current age and lack of education and/or training, it is unlikely that she will ever earn income commensurate with the standard of living she enjoyed during her marriage to Douglas. See *In re Marriage of Keip*, 332 Ill. App. 3d at 883, 773 N.E.2d at 1233. As noted earlier, Deborah's monetary needs, as well as her career and employment income options, were clearly contemplated by the parties at the time of the divorce and at the time that they entered into the marital settlement agreement setting the maintenance award in a permanent fashion.

Based upon a thorough review of the record and a consideration of all the relevant factors, we find that the trial court's reduction of monthly maintenance amounted to an abuse of the court's discretion. The \$6,000 annual amount awarded by the trial court is insufficient for Deborah to meet even the basic needs in life. We conclude that the record amply supports Douglas's ability to continue with the monthly maintenance payments of \$1,400.

In light of the record, we conclude that the trial court's termination of the annual \$40,000 maintenance payment was appropriate. The circumstances of this case are unique. As stated in the court's judgment, the parties connected the annual maintenance payment to a bonus Douglas received from his employer every year in March. With that level of bonus not being a part of Douglas's current compensation package with his new employer, the court's termination of the annual \$40,000 payment was proper as reflective of a substantial change of circumstances. Maintaining the monthly maintenance payment at \$1,400, the annual amount owed by Douglas to Deborah is \$16,800. With his annual compensation of \$103,000, this maintenance amount owed to Deborah will amount to 16.3% of Douglas's

gross pay—a percentage that is close to the original settlement amount. Modifying the maintenance award in this way "strike[s] a balance between the reasonable needs of the parties and the ability of [Douglas] to pay" (*In re Marriage of Keip*, 332 Ill. App. 3d at 882, 773 N.E.2d at 1232) and reflects a consideration of all the statutory factors.

Denial of Petition for Enforcement

Finally, Deborah contends that the trial court's denial of her petition for enforcement relative to Douglas's missed \$40,000 payment in March 2009 was erroneous. We disagree. As earlier detailed, the \$40,000 payment was connected to Douglas's March annual bonus from A.G. Edwards. The substantial change of circumstances warranted the trial court's termination of that aspect of the maintenance Douglas owed Deborah each year. Douglas filed his petition to terminate in November 2008. Therefore, the March 2009 scheduled payment was subsequent to the date on which the petition was filed, and the trial court's order denying the enforcement petition was proper. See 750 ILCS 5/510(a) (West 2008).

CONCLUSION

For the foregoing reasons, we find that the circuit court of St. Clair County abused its discretion in modifying the monthly amount of maintenance but properly terminated the annual maintenance payment and did not err in denying the petition for enforcement. We modify the final judgment pursuant to our authority under Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) by eliminating the decrease in monthly maintenance and restoring the amount of monthly maintenance to \$1,400. We affirm the remainder of the trial court's judgment.

Affirmed as modified.