

2013 IL App (2d) 130483-U  
No. 2-13-0483  
Order filed November 26, 2013

**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

---

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
ROBERT SCHWARTZENBERG,	)	of Lake County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 02-D-115
	)	
OLTEA SCHWARTZENBERG,	)	Honorable
	)	Jay W. Ukena,
Respondent-Appellee.	)	Judge, Presiding.

---

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

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion by extending maintenance indefinitely and increasing it to \$6,650, where the trial court considered the statutory factors, and where respondent made a good faith effort to become self-supporting, but where the prospect of respondent supporting herself at the standard of living during the marriage was speculative.

¶ 2 Petitioner, Robert Schwartzberg, appeals from the trial court's judgment entered upon a petition to review, modify, and extend maintenance filed by respondent, Oltea Schwartzberg. The court increased maintenance from \$4,280 to \$6,650 per month and extended it indefinitely. Robert contends that the court should have terminated maintenance or, alternatively, should have

extended maintenance for a fixed term, rather than indefinitely, and in an amount less than \$6,650 per month. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Robert and Oltea were married July 13, 1984. They had one child during the marriage, a daughter born in May 1991. On January 18, 2002, Robert petitioned for divorce. At the time, Robert was 44 years old and Oltea was 43 years old. Robert was a medical doctor with his own practice, and Oltea was pursuing a doctoral degree in clinical psychology. Previously, Oltea had earned a Bachelor of Science degree and two Master of Music degrees in piano performance. Prior to the marriage, she had worked as a concert pianist and piano teacher.

¶ 5 On September 16, 2003, the court dissolved the marriage, reserving issues of custody, child support, maintenance, and property division. The parties entered into a parenting agreement under which the parties shared joint custody of their daughter, with Robert having primary residential custody. Following a bench trial that ended on June 3, 2004, the court divided the parties' property, awarding 55% of the marital estate to Oltea and 45% to Robert. Based on the agreed values of the property in the parties' joint pretrial memorandum, the value of the marital property awarded to Oltea was more than \$761,000. The property awarded to Oltea included the former marital residence, valued at \$530,000 and unencumbered by any mortgage. The court also awarded Oltea maintenance of \$3,500 per month for 54 months. With respect to maintenance, the court found, in pertinent part:

“It is a long-term marriage. He does have greater earning power than she does. She has some earning power because she has expertise far and above the average individual in the field of music, albeit that it is expertise that she has not plied for some years. She has the outlook of obtaining employment because she's going through her schooling now.

The lifestyle that has been obtained by both parties is not the highest of lifestyles and it's not the lowest of lifestyles. She does need some assistance with respect to her education. However, I don't accept the premise that Dr. Schwartzberg should pay for her degree. She can borrow to obtain that degree, and she can amortize that borrowing over the economic life of her profession once she becomes employed. But it is true that between now and that time she is somewhat economically disadvantaged vis-à-vis Dr. Schwartzberg.”

The court further ordered that, upon the expiration of the 54-month period, maintenance would be reviewable upon petition filed by Oltea, and Oltea would have the burden to show that she needed further maintenance at that time. In awarding maintenance, the court “accepted the premise argued \*\*\* by both parties that the yearly income gross basis for Robert [wa]s probably approximately \$170,000.” The court made no findings regarding Oltea's health. On July 27, 2004, the court entered a supplemental judgment of dissolution labeled “Agreed” that was consistent with the court's oral ruling following trial.

¶ 6 On November 26, 2008, Oltea filed her first petition to review, increase, and modify maintenance. She alleged that the current amount of maintenance was insufficient to allow her to live at the standard of living established during the marriage and that Robert's income had “increased exponentially” since entry of the original maintenance award. The record contains a transcript of the court's ruling on the petition but not of the trial. The court found that Robert was not a credible witness. The court found that it was “not possible to exactly determine” Robert's income, because he had not been “completely forthright in complying with all discovery and not forthright with the bank that he dealt with in the past.” Based on Robert's tax returns, the court found that Robert's average gross income for the years 2006 through 2008 was

approximately \$306,000. Regarding Oltea's efforts to become financially independent, the court found that Oltea had "some problems with the English language" but that, despite those problems, she had been able to obtain her doctoral degree in clinical psychology. The court further found:

"Oltea \*\*\* used reasonable efforts to improve herself and to be self-sufficient because she obtained her doctorate in psychology. \*\*\* [S]he has a history of working to try to help out the family when they were first married, doing what needed to be done to bring income, whether it was helping her husband deliver newspapers, whether it was giving piano lessons, or whether it was working at his office, helping to establish his medical practice, and [she] did such at the detriment of her own training and earning capability.

Further, \*\*\* she needs additional hours to pursue a career to be a psychologist."

Regarding Oltea's alleged medical problems, the court found that, outside of her own testimony, Oltea had not presented any evidence to support her claims. The court found "that no medical limitations were proved." On February 19, 2010, the court increased maintenance to \$5,000 per month for an additional 36 months, retroactive to February 1, 2009. The court again ordered that, upon the expiration of that period, Oltea would have the burden to show that she needed additional maintenance.

¶ 7 Robert filed a motion to reconsider, which the court granted, reducing maintenance to \$3,500 per month for the 36-month period. Oltea then filed a motion to reconsider, which the court also granted, increasing maintenance to \$4,280 for the 36-month period.

¶ 8 On September 9, 2011, Oltea filed her second petition to review, increase, and extend maintenance. She again alleged that the current amount of maintenance was insufficient to allow

her to live at the standard of living established during the marriage and that Robert's income had increased since entry of the last maintenance award.

¶ 9 At trial on her petition, Oltea testified as follows. She continued to live in the former marital residence. She remained unemployed, and her annual income consisted entirely of maintenance payments. The property taxes on her residence had increased "many thousands" since 2009 to just over \$16,000 per year. The cost of her health insurance also had increased since 2009. She had no credit card debt but had been unable to save any money. She had borrowed \$135,000 from her sister to pay for school, which she would have to pay back.

¶ 10 With respect to her health, Oltea testified that it was "not good." She explained that she had suffered from fibromyalgia and back and neck pain "for most of 10 years, 14 years, 15 years" since being in a car accident. She testified that she took prescription Klonopin, which was a muscle relaxer, to help her sleep at night, as well as "a lot of pain killers," which mostly consisted of over-the-counter medications like Tylenol and Advil. The fibromyalgia manifested itself more under stress, such as the stress of an exam. In 2011, she took the exam to be licensed as a clinical psychologist by the State of Illinois. She was granted special testing accommodations due to her health problems, including 50% extra time to complete the exam. She failed the exam despite having studied "very hard" for "at least eight hours a day." Since the last hearing on maintenance in 2009, she had completed 2,000 postdoctoral clinical hours, which were required to sit for the licensing exam. Because of her health, her age, and how hard she had studied for the exam, she was "not very hopeful" about the prospect of taking the exam again.

¶ 11 Regarding her efforts to obtain employment, Oltea testified that her efforts had been impaired by her failure to become licensed. She submitted an exhibit which was a "partial list" of employers she had contacted to inquire about jobs. The typed list consisted of the names of

approximately 40 hospitals and clinics, along with the first names of the individuals to whom she had spoken. For example, one line on the list was, “Good Samaritan Hospital Latisha,” while the next line was, “Highland Park Hospital Elaiza.” No dates or other information appeared. None of the employers she contacted had available jobs in psychology. She called the employers on the list and went in person to “a few places.” She also looked on the internet for jobs. She testified that there were available jobs that required either a license, very specific experience, or the ability to speak Spanish, none of which she had. She had prepared a curriculum vitae (C.V.) sometime after receiving her doctoral degree in 2008. She also had created a profile on the professional social networking website LinkedIn. Oltea also had posted flyers in “many churches in the area” offering piano lessons, but she had not received any responses. When asked about her plans for future employment, Oltea testified:

“Unfortunately, I’m very discouraged about my future because of a combination of reasons. When I came to America, I did everything in my power, I took any job and I don’t believe that any job is beneath me. For example, I gave phone books from door to door so I can support my husband when he was studying for his exam. However, now it’s many, many years, 25 years later, and because my health has deteriorated, I cannot do the type of job anymore. I have letters from doctors stating that. The most I can do would be a part-time job, sitting in a position that I can change for that moment.

I have tried so many places to inquire about a job. I cannot have a job without a license. I’m getting older and not younger. At 53 it’s very difficult to find a job. In the Chicago area six out of 12 mental health clinics has [*sic*] been closed, so my colleagues did have a job and lost their job [*sic*]. There are no jobs out there.”

She further testified that she weighed only 90 pounds and could not lift much. She had been taking Klonopin for 10 years and it affected her memory and cognitive abilities. She also had significant dental problems that would continue to require extensive treatment.

¶ 12 On cross-examination, Oltea testified that she had not submitted her C.V. anywhere other than the LinkedIn website. She had not submitted it to any potential employers. She explained that in the psychology field, submitting an unsolicited C.V. was “just not done.” With respect to the list of employers she had contacted, Oltea testified that it “was prepared over many years” but typed “sometime in the last month.” Oltea further testified that, for seven years during the marriage, she had worked without pay as the officer manager of Robert’s medical practice. Since the divorce, she had not attempted to obtain a job as an office manager. She further testified that her daughter was 21 years old and in college. Oltea had not contributed to her daughter’s tuition.

¶ 13 On redirect examination, Oltea testified that her current maintenance payments were insufficient to pay her monthly expenses.

¶ 14 Robert testified as follows. Robert’s tax returns for 2009, 2010, and 2011, listed the gross income for him and his current wife as \$322,157, \$353,549, and \$390,387, respectively. Robert’s wife earned approximately \$34,000 each year as his office manager. Robert’s wife was also the 98% owner of an LLC that owned the medical building in which Robert’s medical practice was housed. Robert’s mother owned 2% of the LLC. The LLC received annual rents of \$71,000 in 2010 and \$94,000 in 2011. A separate tax return was filed for the LLC. At the time of the last maintenance hearing, Robert was paying just over \$4,000 per month on the mortgage on the medical building. Since that time, Robert’s mother had paid off the mortgage, which had a 7% interest rate. Now, the LLC owed Robert’s mother \$460,000 at an interest rate of 2.75%.

The LLC paid Robert's mother \$2,800 per month on the note. The gross receipts of Robert's medical practice were \$662,000 in 2009, \$593,000 in 2010, and \$606,000 in 2011. In December 2010, Robert paid a bonus to himself from his medical practice of \$25,000. At the time of the last maintenance review hearing, his name was on the title to a home in Galena, Illinois, along with his wife, mother, and father. Since that time, Robert had quitclaimed his interest in the property to his wife and mother. Regarding his expenses and standard of living, Robert lived in the same house and made the same mortgage and home equity loan payments that he paid at the time of the last hearing on maintenance. He traveled to seminars once or twice per year. He had a cleaning service that came twice per month.

¶ 15 On cross-examination, Robert explained that his name had been on the title to the Galena property due to "some estate planning that somebody did." However, he had no ownership interest in the property, and his mother paid the mortgage on the property.

¶ 16 Robert also called Jeff Lucas, Ph.D., as an expert witness. Lucas, who had degrees in psychology and human services, testified to his opinion of Oltea's ability to return to work and employment prospects. He opined that Oltea was qualified for a number of open positions either in the field of psychology or as an office manager. On cross-examination, Lucas admitted that he had never met with or interviewed either Oltea or Robert.

¶ 17 The trial court took the matter under advisement and rendered its ruling on March 8, 2013. The court indicated that it had considered all of the evidence and testimony and all of the factors set forth in sections 510(a-5) and 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a-5), 504(a) (West 2012)). The court made the following factual findings. There were "still some credibility issues" with Robert's testimony. Robert's income, as well as his earning capacity, had increased since the last maintenance hearing while

his expenses had decreased. Robert had acquired substantial additional property “even though much of it [was] put in the name of his new wife and mother-in-law.” Lucas’s opinion testimony was not credible and would be given little to no weight, because he had never met with or interviewed Oltea or Robert or reviewed any of Oltea’s medical records. Oltea’s income and earning capacity had “basically stayed the same” since the last maintenance review hearing. Oltea’s needs had increased, including her real estate taxes, auto insurance premiums, medication costs, and “numerous others that were laid out in the argument [and] in the exhibits.” The parties’ standard of living during the marriage was “one of upper middle class, an income in excess of 150,[000,] closer to \$200,000 during the marriage.” “Oltea ha[d] yet to acquire and to be able to use skills to be able to earn an income within the lifestyle of the marriage that they had, but ha[d] made a good faith effort to try to get there.” Oltea had completed 2,000 postdoctoral hours since the last maintenance review hearing, in addition to the 2,000 hours she had completed prior to the last review hearing, and had taken but failed the licensing exam. Oltea continued to have “some issues with the English language.” Oltea also suffered from fibromyalgia, “the extent of which [was] not shown.” She also took “daily pain medication and ha[d] some extensive dental issues, and at least as of the time of the hearing was frail and weighed 90 pounds.” Further, Oltea “did sacrifice a career as a pianist and a teacher of music to basically help raise the child during the marriage but also developed Robert’s medical practice where she worked as an unpaid manager.” Oltea “still need[ed] time to acquire reasonable skills to get back into earning a living.”

¶ 18 The court further found that, to maintain her basic needs at a level that approximated the standard of living during the marriage, Oltea was entitled to \$6,650 per month in maintenance. The court concluded:

“[G]iven the uncertainties of [Oltea’s] ability to earn income, her age, given the analysis of [section] 510, [and section] 504, given the standard of living during the marriage, \*\*\* the disparity in earning potential of the two parties, the uncertainty of what [Oltea’s] ability to earn income in the future is going to be and the uncertainty of her ability to become financially independent and live by the lifestyle of the marriage, \*\*\* the maintenance should be indefinite in nature.”

The court entered a written order on April 9, 2013, consistent with its oral ruling. Robert timely appealed.

¶ 19

#### ANALYSIS

¶ 20 On appeal, Robert argues that the trial court abused its discretion in granting Oltea’s petition to review, modify, and extend maintenance. Robert contends that the trial court should have terminated maintenance or, alternatively, the trial court should have extended maintenance for a fixed term and in an amount less than \$6,650 per month. Robert advances a number of arguments in support of his position, which we address in turn.

¶ 21 In reviewing maintenance, a trial court is required to consider all of the relevant factors in sections 510(a-5) and 504(a) of the Act. 750 ILCS 5/510(a-5), 504(a) (West 2012); *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). “The benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, the duration of the marriage, the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the non[ ]marital property.” (Internal quotation marks omitted.) *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004). “[C]ourts have wide latitude in considering what factors should be used in determining

reasonable needs, and the trial court is not limited to the factors listed in the governing statute.”

(Internal quotation marks omitted.) *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10.

¶ 22 Maintenance can be for a fixed or indefinite period of time. 750 ILCS 5/504(a) (West 2012). As a general rule, maintenance is intended to be rehabilitative in nature so that a dependent spouse has the time and resources to become financially independent. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008). Ordinarily, rehabilitative maintenance is paid for a fixed term, after which it terminates, providing the recipient spouse with an incentive to use diligence in procuring training or skills necessary to become “rehabilitated” and attain self-sufficiency. *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 24. The failure of the recipient spouse to make good-faith efforts to achieve financial independence can form the basis for modifying or terminating maintenance. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 629 (2000); *In re Marriage of Mitra*, 114 Ill. App. 3d 627, 635 (1983).

¶ 23 Permanent, or indefinite, maintenance, on the other hand, is appropriate where the recipient spouse is either unemployable or employable at an income substantially lower than one that would allow the spouse to approximate the standard of living enjoyed by the parties during the marriage. *Brankin*, 2012 IL App (2d) 110203, ¶ 9; *Heroy*, 385 Ill. App. 3d at 652. Courts are more likely to approve of permanent maintenance where spouses have disparate earning potentials (*Selinger*, 351 Ill. App. 3d at 618-19); where one spouse has raised the children and supported the family, thereby forgoing employment and the development of skills, while the other spouse has obtained an education and become established in a profession (*In re Marriage of Schiltz*, 358 Ill. App. 3d 1079, 1084 (2005)); or where one spouse is disabled to the point where he or she is unable to work (*In re Marriage of Brackett*, 309 Ill. App. 3d 329, 340 (1999)).

The trial court is in the better position to determine whether permanent or rehabilitative maintenance is more appropriate. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 305 (2010).

¶ 24 When reviewing maintenance, a trial court has the discretion to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms. *Blum*, 235 Ill. 2d at 36. A trial court’s decision to modify maintenance will not be disturbed absent a clear abuse of discretion. *Blum*, 235 Ill. 2d at 36. A clear abuse of discretion occurs when a trial court’s ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Blum*, 235 Ill. 2d at 36. “The mere fact that reasonable persons could reach different conclusions on the facts of the case is insufficient to find that the trial court abused its discretion; only if no reasonable person could find as the trial court did is there an abuse of discretion.” *In re Marriage of Nuechterlein*, 225 Ill. App. 3d 1, 8 (1992). Robert’s contention that our review is *de novo* to the extent that the trial court’s construction of the Act is at issue, while a correct statement of the law (see *Blum*, 235 Ill. 2d at 29), is misplaced. No issue of statutory construction is raised.

¶ 25 Failure to Terminate Maintenance

¶ 26 Robert first argues that Oltea failed to prove that she made a good faith effort to become financially independent and that the court should have terminated maintenance. He relies on the second factor listed in section 510(a-5) of the Act—“the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate” (750 ILCS 5/510(a-5) (West 2012)—as well as *Cantrell* and other cases. Robert maintains that, because Oltea was receiving rehabilitative maintenance for a fixed term and did not make a good faith effort to become self-supporting during that time, the court should have terminated maintenance.

¶ 27 In *Cantrell*, the parties were married for 26 years, and the petitioner stayed at home to raise the parties' two children. *Cantrell*, 314 Ill. App. 3d at 624-25. In the original judgment of dissolution, the court ordered the respondent to pay \$300 per week in maintenance for four years, but shortly thereafter increased it to \$3,000 per month, finding that there was a large disparity in the parties' earning abilities. *Cantrell*, 314 Ill. App. 3d at 625. The court also ordered the respondent to pay the petitioner's college expenses. *Cantrell*, 314 Ill. App. 3d at 625. Upon the expiration of the four-year period, the court extended maintenance for an additional two years, finding that the petitioner had earned her college degree and was making a good faith effort toward establishing herself in her chosen field, which was photography. *Cantrell*, 314 Ill. App. 3d at 625. The petitioner continued to pursue her photography business but sustained a net loss each of the years 1996 through 1998. *Cantrell*, 314 Ill. App. 3d at 626. She also applied for 8 to 12 full-time positions but received no offers of employment. *Cantrell*, 314 Ill. App. 3d at 626. When the court again reviewed maintenance at the end of two years, the court denied the respondent's request to terminate maintenance and extended maintenance indefinitely. *Cantrell*, 314 Ill. App. 3d at 627.

¶ 28 The appellate court reversed, holding that the trial court abused its discretion when it failed to terminate maintenance. *Cantrell*, 314 Ill. App. 3d at 630. The court reasoned that the petitioner was employable, her children were emancipated, she had received substantial marital assets, and she had "no apparent health impairments that might restrict her from working." *Cantrell*, 314 Ill. App. 3d at 630. Further, petitioner had "done little toward finding gainful employment or advancing her efforts at becoming self-sufficient." *Cantrell*, 314 Ill. App. 3d at 630. The court concluded that the statutory goal of rehabilitative maintenance had been met and that the court's award of permanent maintenance "serve[d] as a disincentive to petitioner to

achieve financial independence, prolonge[d] petitioner's dependence and respondent's litigation expenses, and discourage[d] judicial economy." *Cantrell*, 314 Ill. App. 3d at 630.

¶ 29 While we agree with Robert that there are some similarities between this case and *Cantrell*—which primarily involve the procedural backgrounds of the two cases and the fact that the ex-wives in both cases earned degrees following the original maintenance awards—we nevertheless agree with Oltea that *Cantrell* is distinguishable. As Oltea argues, her efforts to become self-supporting are readily distinguishable from the efforts of the petitioner in *Cantrell*. The petitioner in *Cantrell*, who already had a two-year degree at the time of the dissolution, earned a four-year bachelor of fine arts degree following the original award of maintenance. *Cantrell*, 314 Ill. App. 3d at 625-26. At the time of the second maintenance review, she had started a photography business, which had not returned a profit. *Cantrell*, 314 Ill. App. 3d at 626. Based on the court's opinion in *Cantrell*, it is unclear whether the petitioner in that case was pursuing her photography business with the ultimate goal of becoming self-supporting or, if that was her goal, whether she was making a good faith effort to achieve it.

¶ 30 Oltea, by contrast, has consistently taken concrete steps toward the reasonable goal of becoming a licensed clinical psychologist, a profession that would allow her to support herself at a significant income. Following the original judgment of dissolution, Oltea earned a doctoral degree in clinical psychology, which was an advanced degree requiring significant schooling. At the time of the second review of maintenance, Oltea had completed 2,000 hours of postdoctoral clinical work in addition to the 2,000 hours she had completed prior to the first review of maintenance. She also had studied "very hard" for "at least eight hours a day" for the licensing exam. Although Oltea failed the exam, until she was notified of her exam results, all of her efforts had been directed toward the ultimate goal of obtaining a position as a licensed clinical

psychologist, which was consistent with the spirit of the prior maintenance awards. Unlike in *Cantrell*, it is clear that Oltea consistently has made a good faith effort toward the goal of becoming self-supporting.

¶ 31 Further, as Oltea also argues, the court in *Cantrell* found that the petitioner suffered from “no apparent health impairments,” while, here, Oltea suffered from fibromyalgia, neck and back pain, and extensive dental problems. In addition to her health problems, Oltea testified that she has taken prescription Klonopin for 10 years and that it has affected her memory and cognitive abilities. Although the trial court found that the extent of Oltea’s fibromyalgia was not proven, and although the record does not reveal the extent to which Oltea’s health problems actually impaired her ability to work, the existence of Oltea’s health problems nevertheless serves to further distinguish this case from *Cantrell*. In addition, the trial court found that Oltea was frail and weighed only 90 pounds and has difficulties with the English language, factors that were not present in *Cantrell*.

¶ 32 Although we agree with Robert that the evidence Oltea presented of her job search efforts was lacking in many respects, we do not agree that this consideration justifies terminating maintenance. The list of hospitals and clinics that Oltea offered into evidence, which were the places she had inquired regarding employment, was devoid of detail. As we described above, the list consisted of the name of each hospital or clinic, followed by the first name of the individual to whom she had spoken. No dates or other information appeared. Furthermore, on cross-examination, Oltea testified that she had compiled the list “over many years” but had typed it “sometime in the last month.” Based on Oltea’s testimony, it is impossible to determine whether she contacted the employers before or after the last maintenance review hearing. While Oltea could have presented more detailed evidence of her job search efforts, in light of her other efforts

toward becoming self-supporting—such as her efforts to complete the postdoctoral clinical work hours and to study and sit for the licensing exam—the lack of such evidence alone did not warrant a different result than the one the trial court reached.

¶ 33 In sum, the evidence supported the trial court’s finding that Oltea made a good faith effort to become self-supporting. Accordingly, we disagree with Robert that the harsh result of terminating maintenance was warranted in this case.

¶ 34 The other cases upon which Robert relies in support of his argument that maintenance should be terminated are also distinguishable. See *In re Marriage of Courtright*, 229 Ill. App. 3d 1089, 1092-93 (1992) (trial court’s termination of maintenance was affirmed where former wife had earned less than \$2,050 per year as a substitute teacher and had applied for no full-time teaching positions, despite having renewed her teaching certificate); *In re Marriage of McGory*, 185 Ill. App. 3d 517, 521 (1989) (trial court’s termination of maintenance was affirmed where former wife was “less than diligent” in attempting to earn a degree that “properly should have taken two years” and where she failed to diligently seek employment).

¶ 35 Modification of Maintenance from Rehabilitative to Indefinite

¶ 36 Robert next argues that the trial court abused its discretion in modifying maintenance from rehabilitative to indefinite. He maintains that Oltea was entitled to indefinite maintenance, as opposed to continued rehabilitative maintenance for a fixed term, only if she proved that her earning capacity was impaired such that she would never achieve the goal of rehabilitative maintenance, which was to become financially independent. According to Robert, the court’s findings that there was “uncertainty” about Oltea’s “ability to become financially independent” and that Oltea “still need[ed] time to acquire reasonable skills and to get back into earning a living” at most supported continued rehabilitative maintenance, not indefinite maintenance.

Robert heavily relies on the third factor listed in section 510(a-5) of the Act—“any impairment of the present and future earning capacity of either party” (750 ILCS 5/510(a-5)(3) (West 2012)).

¶ 37 Oltea responds that, considering all of the relevant factors from sections 510(a-5) and 504(a) of the Act, and taking into consideration judicial economy, the court’s decision to award indefinite maintenance was not an abuse of discretion. Oltea maintains that, considering the length of the marriage, the standard of living during the marriage, the support Oltea provided Robert and the family during the marriage as Robert was establishing his medical practice, the parties’ disparate earning capacities, and Oltea’s health problems, the award of indefinite maintenance was reasonable.

¶ 38 Oltea presented evidence that, since the last maintenance award, her expenses had increased, including her real estate taxes and health insurance premiums. She had completed 2,000 additional hours of clinical psychology work in order to sit for the licensing exam. She had failed the exam despite studying “very hard” for “at least eight hours a day.” She testified that, because of her health, her age, and how hard she had studied for the exam, she was “not very hopeful” about the prospect of taking the exam again. She further testified that 6 out of 12 mental health clinics in the Chicago area had closed and that many of her colleagues had lost their jobs. She also presented evidence that she suffered from fibromyalgia and neck and back pain, although, as we discussed above, she did not prove the extent of her medical conditions or whether they actually impaired her ability to work. At a minimum, her health conditions supported her claim that her expenses had increased. Oltea also presented evidence that Robert’s income had increased.

¶ 39 We cannot say, based on the evidence Oltea presented, that the court abused its discretion in extending maintenance indefinitely. The court’s first two maintenance awards contemplated

that Oltea would obtain her doctoral degree in clinical psychology, become licensed in that field, and become self-supporting at a level that approximated the standard of living during the marriage. In awarding rehabilitative maintenance at the time of the dissolution, the court recognized that, until Oltea earned her degree and obtained employment, she would be “economically disadvantaged vis-à-vis” Robert. In extending maintenance for 36 months upon the first review, the court found that Oltea “need[ed] additional hours to pursue a career to be a psychologist.” Following the last maintenance award, Oltea’s circumstances changed. Despite diligent efforts, she failed the licensing exam. The assumption underlying the court’s prior awards of rehabilitative maintenance—that Oltea was on her way to becoming a licensed clinical psychologist—no longer was a reliable assumption. As the court properly concluded based on the evidence, “uncertainty” had developed concerning Oltea’s employment prospects. Given the effort with which she had studied for the exam and the length of time since she had graduated, Oltea understandably was “not hopeful” about her prospects of retaking the exam. According to Oltea, the Klonopin she had taken for the past 10 years had affected her memory, which further discouraged her exam-taking prospects. Any conclusion that Oltea would, in the near future, be able to support herself at a level approximating the standard of living during the marriage, would have entailed impermissible speculation. See *In re Marriage of Sisul*, 234 Ill. App. 3d 1038, 1040 (1992) (“An award of maintenance must be made on the basis of the circumstances disclosed by the evidence at the time of the hearing. [Citation.] The trial court must not engage in speculation as to the future condition of the parties. [Citation.]”).

¶ 40 With the prospect of Oltea obtaining employment in her chosen field of clinical psychology much diminished, the court was faced with former spouses with greatly disparate incomes and earning potentials, which supported the trial court’s award of indefinite

maintenance. See *Selinger*, 351 Ill. App. 3d at 618-19 (reversing an award of time-limited maintenance and ordering permanent maintenance where the former wife earned \$36,870 per year as a registered nurse and the former husband earned in excess of \$100,000 as a lobbyist). Oltea's only income was from maintenance payments and had not changed. Robert's income, on the other hand, was well over \$300,000 per year and had increased since the prior maintenance award. Although the " 'optimal goal' " of maintenance is for former spouses to become financially independent, " 'under circumstances involving former spouses with grossly disparate earning potentials, this goal is often not achievable in light of the dependent former spouse's entitlement to maintain the standard of living during the marriage.' " *Selinger*, 351 Ill. App. 3d at 618 (quoting *In re Marriage of Lenkner*, 241 Ill. App. 3d 15, 25 (1993)). Here, the standard of living during the marriage was founded upon Robert's income of \$170,000 per year.<sup>1</sup> The

---

<sup>1</sup> We note that the judge who entered the original maintenance award described the standard of living as "not the highest of lifestyles and \*\*\* not the lowest of lifestyles," while the judge who extended maintenance indefinitely upon the second review of maintenance described it as "one of upper middle class, an income in excess of 150,[000,] closer to \$200,000 during the marriage." The original maintenance award was *res judicata* as to the standard of living during the marriage (*In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 42), so it was improper for the second judge to reach a different finding on that issue. Nevertheless, we cannot say the second trial judge's description of the standard of living was inconsistent with the original judge's description. Regardless of how the judges described the standard of living, both descriptions were based on Robert's income of approximately \$170,000 per year.

chances of Oltea earning an income that would allow her to approximate that standard of living were greatly reduced upon her failing the licensing exam.

¶ 41 Also supporting the trial court's award of indefinite maintenance was the consideration that Oltea had supported Robert during the marriage as he established his medical practice. The fourth and tenth factors listed in section 504(a) of the Act are:

“(4) any impairment of the present and future 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;

\*\*\*

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse[.]” 750 ILCS 5/504(a)(4), (5) (West 2012).

During the marriage, Oltea worked as Robert's unpaid office manager for seven years, cared for the parties' daughter, and at times worked odd jobs such as delivering newspapers or teaching piano lessons. Although these were facts existing at the time of the original judgment of dissolution, they continued to have significance at the time of the second review of maintenance. It was because Oltea did not develop employment skills or pursue a career during the marriage that she was in need of rehabilitative maintenance at the time of the original judgment of dissolution. When her good-faith efforts to pursue a career as a licensed clinical psychologist were unsuccessful, the years during which Oltea had forgone the development of skills continued to have economic consequences. While Robert contends that Oltea developed office management skills during the marriage and retained her piano skills, the record discloses that

Oltea has not plied these skills for at least a decade. Regardless, it is doubtful that these are skills that would allow Oltea to approximate the standard of living during the marriage.

¶ 42 Robert argues that Oltea's assertion that she abandoned her career as a concert pianist in order to raise the parties' child and support the family is both unsupported by the record and irrelevant. Addressing Robert's first contention, Oltea's assertion is supported by the record, because, in extending maintenance for 36 months following the first review of maintenance, the court found that Oltea "ha[d] a history of working to try to help out the family when they were first married, \*\*\* and [she] did such at the detriment of her own training and earning capability." In extending maintenance indefinitely upon the second review of maintenance, the trial court essentially reiterated its earlier finding, stating that Oltea "did sacrifice a career as a pianist and a teacher of music to basically help raise the child during the marriage."

¶ 43 Addressing Robert's second contention, that Oltea's assertion is irrelevant, we disagree. Robert contends that it is irrelevant because, even if Oltea did forgo career opportunities to support the family during the marriage, the trial court's two prior maintenance awards were rehabilitative. Thus, according to Robert, the court already had "determined that Oltea could rehabilitate herself." The problem with Robert's argument is that, as we discussed above, a fundamental consideration underlying the court's prior awards of rehabilitative maintenance was that Oltea was on her way to becoming a licensed clinical psychologist. Once that consideration changed, Oltea's relative lack of employment skills took on new significance. Following the last maintenance award, Oltea failed the licensing exam and her expenses increased. This change in circumstances, when viewed in light of the fact that Oltea had forgone the development of employment skills during the marriage, supported the court's award of indefinite maintenance. Although a prior maintenance award is *res judicata* as to facts existing at that time, a prior award

of maintenance does not limit a court's ability to modify or extend maintenance based on evidence dating back to the last maintenance award. *In re Marriage of Connors*, 303 Ill. App. 3d 219, 226 (1999). Considerations of *res judicata* aside, section 510(a-5) requires a trial court reviewing maintenance to consider the factors in section 504(a) of the Act (*Blum*, 235 Ill. 2d at 36), the fourth of which is "any impairment of the present and future 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." 750 ILCS 5/504(a) (West 2012). The court did not abuse its discretion by deciding that this factor, viewed in light of the changed circumstances, supported an award of indefinite maintenance.

¶ 44 Robert further argues that the trial court's finding that Oltea "still need[ed] time to acquire reasonable skills to get back into earning a living" did not justify an award of indefinite maintenance because the finding implied that Oltea was employable. Robert recites the rule of law (in his words) that "indefinite maintenance is only proper for an unemployable spouse or a low-earning spouse." He goes on to argue that Oltea is not a "low-earning spouse" because she does not work. He maintains, therefore, that Oltea is "only entitled to indefinite maintenance if she is unemployable." Thus, according to Robert, because the court's finding implied that Oltea was employable, she was not entitled to indefinite maintenance.

¶ 45 Robert's logical syllogism is premised on a misstatement of the law of maintenance. One court's statement of the law is particularly apt here:

"We note permanent maintenance is not limited to spouses who are unemployable. [Citation.] Permanent maintenance is also appropriate where a spouse is 'only employable at a lower income as compared to the spouse's previous standard of living.'

[Citation.]” *Nord*, 402 Ill. App. 3d at 305 (quoting *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008)).

Here, even if the trial court’s finding that Oltea “still need[ed] time to acquire reasonable skills to get back into earning a living” did imply that she was employable, it said nothing about her ability to become employed at a level that would approximate the standard of living during the marriage. As the court in *Nord* explained, “the goal that the spouse obtain employment is balanced against the likelihood that the ‘spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage.’ ” *Nord*, 402 Ill. App. 3d at 306 (quoting *In re Marriage of Stam*, 260 Ill. App. 3d 754, 757 (1994)). In light of Oltea’s circumstances at the time of the second review of maintenance, any conclusion that Oltea was employable at a level that would approximate the standard of living during the marriage would have been based on impermissible speculation. “ ‘[W]hen the facts make it clear that one spouse is unable to support herself in the manner in which they lived during the marriage, then it is an abuse of discretion to award only rehabilitative maintenance.’ ” *Nord*, 402 Ill. App. 3d at 306 (quoting *Carpel*, 232 Ill. App. 3d at 828)).

¶ 46 Robert also contends that the trial court misapplied the burden of proof when it extended maintenance indefinitely. According to Robert, in order to prove her entitlement to indefinite maintenance, Oltea was required to prove that her earning capacity was impaired such that she would never achieve the goal of rehabilitative maintenance. However, at most, Oltea proved that there was “uncertainty” regarding her future earning capacity. Thus, according to Robert, the court mistakenly concluded that Oltea had met her burden of proof.

¶ 47 Again, Robert misconstrues the law of maintenance. While Robert is correct that the prior maintenance award placed the burden of proof on Oltea to show that she needed continued

maintenance upon the expiration of the 36-month period, he is incorrect that meeting that burden turned solely on proving that her earning capacity was permanently impaired or that she was unemployable. As we stated above, in reviewing maintenance, a trial court is required to consider all of the relevant factors in sections 510(a-5) and 504(a) of the Act. *Blum*, 235 Ill. 2d at 36. Thus, if Oltea presented evidence dating back to the last maintenance award evincing her entitlement to indefinite maintenance in light of those factors, then she met her burden. As we have already determined, the evidence Oltea presented, when viewed in light of the relevant statutory factors, did support the court's award of indefinite maintenance.

¶ 48 We also agree with Oltea that considerations of judicial economy support the trial court's decision to extend maintenance indefinitely. As the court in *In re Marriage of Gunn*, 233 Ill. App. 3d 165 (1992), stated: "To insist that every award of long-term maintenance be automatically reviewed does not take into account judicial economy or whether, under the unique circumstances of the parties, the facts of the case, and the standard of living achieved during the marriage, the spouse receiving maintenance could ever obtain the training or skills necessary to provide partial or full independence." *Gunn*, 233 Ill. App. 3d at 179. Considering the uncertainty regarding Oltea's future employment, we agree with her that judicial economy is served by upholding the court's award of indefinite maintenance.

¶ 49 Amount of Maintenance

¶ 50 Robert next argues that the amount of maintenance the trial court awarded was excessive. Robert refers to Oltea's affidavit of monthly expenses submitted to the trial court, in which she reported monthly federal income tax of \$908, monthly state income tax of \$200, and monthly expenses of \$6,589, including \$350 for "pending classes, fees, seminars" and \$640 for medical and dental expenses. Robert contends that, because Oltea failed to prove that she incurred

federal and state income taxes in that amount, that she had plans to attend future classes or seminars, or that she incurred medical and dental expenses in that amount, the trial court abused its discretion in awarding \$6,650 in maintenance. Robert contends that the court's maintenance award was "almost identical" to the amount that Oltea claimed as monthly expenses in her financial affidavit.

¶ 51 The problem with Robert's argument boils down to arithmetic. Oltea's financial affidavit listed monthly expenses of \$6,589 *in addition to* monthly federal and state income taxes of \$1,108. Thus, including income taxes, Oltea's claimed monthly expenses totaled \$7,697. Accordingly, the trial court did not simply accept Oltea's claimed monthly expenses at face value, as Robert contends. Rather, the court awarded maintenance in an amount that was more than \$1,000 less than Oltea's claimed monthly expenses. The court found that the maintenance it awarded would allow Oltea to "maintain her basic needs [and] to maintain something approximated to the lifestyle of the marriage." In sum, Robert's attack on Oltea's financial affidavit is misplaced and does not establish that the court abused its discretion in awarding \$6,650 in maintenance.

¶ 52 Robert also argues that the court should have imputed income to Oltea, which would have resulted in a lesser maintenance award. He relies on *S.D.*, in which the court affirmed the trial court's decision to impute income to the former wife who was receiving maintenance. *S.D.*, 2012 IL App (1st) 101876, ¶¶ 30, 37. The court's decision was based on the wife's failure to take a social worker licensing examination or to seek employment, which the court concluded was in bad faith. *S.D.*, 2012 IL App (1st) 101876, ¶¶ 30, 37. *S.D.* is distinguishable from this case, where Oltea did study for and take the exam to become a licensed clinical psychologist. As

we concluded above, although Oltea ultimately failed the exam, this did not mean that her efforts were not in good faith. The court did not abuse its discretion in not imputing income to Oltea.

¶ 53

CONCLUSION

¶ 54 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 55 Affirmed.