NOTICE
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2013 IL App (4th) 120950-U

NO. 4-12-0950

FILED
July 1, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
GABRIELLA H. WHEAT,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
and	)	No. 09D245
STEPHEN A. WHEAT,	)	
Respondent-Appellant.	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where petitioner and her boyfriend rarely spent the night together, kept their belongings and finances separate, and did not spend every vacation and holiday together, the trial court's finding they were not engaged in a marriage-like relationship was not against the manifest weight of the evidence.

¶ 2 Respondent, Stephen A. Wheat, appeals the Macon County circuit court's September 12, 2012, order denying his request to terminate his monthly maintenance payments to petitioner, Gabriella H. Wheat. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties married in August 1990 and had no children. In May 2009, petitioner filed a petition for a dissolution of the parties' marriage. In July 2009, the trial court entered the dissolution judgment that incorporated the parties' marital settlement agreement (Agreement).

¶ 5 As to maintenance, the Agreement provided respondent was to pay petitioner

$3,500 in monthly maintenance. Section 6.03 of the Agreement addressed cohabitation and provided, in pertinent part, the following:

> "In the event that the wife co-habitates with another person on a resident conjugal basis, regardless of whether or not wife and her co-habitant retain separate households, the husband shall pay maintenance to the wife upon her co-habitation for a period of thirty-six (36) months. The wife has an affirmative obligation to advise the husband when she begins to co-habitate with another party, and if she fails to notify Mr. Wheat of the co-habitation, or if she notifies him of the wrong date of her co-habitation, maintenance will terminate (retroactively) upon the date of her co-habitation."

¶ 6 In August 2009, petitioner began dating Michael Fombelle (Mike), the attorney who represented her in the dissolution proceedings. In September 2011, petitioner, with Mike as her attorney, filed a petition for (1) an accounting of Invivo Ventures, LLC, and (2) contribution of repairs and improvements to the former marital residence. In February 2012, petitioner obtained new counsel in this case.

¶ 7 In November 2011, respondent filed a petition for the termination of maintenance, asserting petitioner had entered into a cohabitation relationship with Mike and had failed to notify him of the relationship. In March 2012, petitioner filed a petition for an adjudication of indirect civil contempt based on respondent's failure to pay maintenance. The petition requested $750 for petitioner's attorney fees.

¶ 8 On September 12, 2012, the trial court held a joint hearing on respondent's petition to terminate maintenance and petitioner's contempt petition. Respondent presented the testimony of petitioner and Mike as adverse witnesses. The following is a condensed version of the evidence presented at the hearing.

¶ 9 Mike and petitioner both testified they had been in an exclusive dating relationship for three years, except for when they broke up for around a week. They continued to have a sexual relationship that began shortly after they started dating. Mike testified they "very infrequently" spent the night together. He explained it was once or twice a month, if that. Petitioner testified she "rarely" spent the night at Mike's and he only spent the night once every two to three weeks. Petitioner does not keep any clothing at Mike's home, and Mike only has swim trunks at her house as she has a pool. They both do have either a key or an access code to each other's house. Mike sometimes lets petitioner's dogs out when petitioner is working late. They "seldom" drive each other's cars.

¶ 10 Mike refers to petitioner as his girlfriend and treats her like family. They have celebrated together the last two Thanksgivings and Christmases as well as the last Easter. Mike and petitioner have also celebrated one Fourth of July at his family's annual celebration with other families. They celebrate their birthdays together, and in 2011, petitioner had a 50th birthday party for Mike. Petitioner has met Mike's three children, parents, sister, and one cousin, but not his brother. Petitioner and Mike's family show affection for each other when together, and petitioner buys Christmas gifts for Mike's children. One time, they shopped together for a gift for Mike's parents. They have gone out to dinner as a couple with Mike's family members. Petitioner has given one of Mike's daughters $50 when she went away to college. Mike has met

petitioner's friends but does not go out to dinner with petitioner and her friends. Mike and his children have met petitioner's mother, who lives in Hungary, and they call her "mootie," which means mother.

¶ 11 In fall 2010, Mike's son had some difficulties that required an intervention. Petitioner attended the intervention with Mike. Later, petitioner, who has a master's degree in social work, gave professional advice to both Mike and his son on ways to repair their relationship. Petitioner did not charge Mike for her services.

¶ 12 Moreover, Mike did not charge petitioner for his legal work in September 2011 and had not asked petitioner to pay a $300 legal bill. Mike also purchased and installed a storm door on petitioner's house, and petitioner reimbursed him for the door's costs. Mike and his son also cut down some trees on petitioner's property. Additionally, in December 2011, Mike borrowed $3,000 from petitioner, which he repaid in January 2012. Mike and petitioner also try to keep things equal by taking turns paying for meals out and the like.

¶ 13 Mike and petitioner have taken three vacations together and two overnight trips. Two of the vacations included petitioner's mother. On both occasions, petitioner paid her and her mother's portion of the trip, and Mike paid his. The third trip was more of a weekend ski trip with Mike's friend from law school and his friend's spouse. They again divided the cost of the trip. During the past three years, Mike has taken five to six other trips without petitioner. With the two local overnight trips, one of them bought tickets to an event, and the other one paid for the hotel room. Mike and petitioner have also attended two weddings together for friends of Mike's family.

¶ 14 Mike and petitioner have met each other's coworkers. Petitioner helps run a

charity event, and Mike has sponsored a table for the event.

¶ 15 Additionally, Mike and petitioner usually spend time together two to four times a week in the evening. Mike usually goes to petitioner's house for a few hours before going home. They also talk to each other on the telephone every morning and evening. Mike and petitioner will occasionally pick up items for each other at a store. They also exchange gifts with each other at holidays and birthdays. Mike occasionally brings petitioner flowers. Petitioner signs her cards to Mike with love and tells him she loves him.

¶ 16 Petitioner acknowledged sending a January 2012 e-mail to respondent, in which she said the following: "I'd never do anything to Teresa or Connor. That's your family, this is mine now." Petitioner explained she was referring to Mike and his children as her family.

¶ 17 Evidence depositions of Mike's three children were also admitted into evidence. The three children all confirmed petitioner had spent Christmas and Thanksgiving with them the past two years. They also testified to having dinner with their father and petitioner at both their father's house and petitioner's house. The three children also noted gifts from petitioner, and Mike's son, Michael Fombelle (Michael), mentioned a joint gift he received from petitioner and his father. They all testified they call petitioner's mother "mootie."

¶ 18 Michael testified his father and petitioner do stay overnight together, but "very infrequently." He noted his father liked to sleep in his own bed and by himself. When Michael lived at his father's home, Michael saw petitioner about once a week. Michael knows his grandparents, his father, and petitioner occasionally have dinner together, and his father and petitioner run petitioner's dogs on his grandparents' property. Michael also testified he and petitioner are close and show affection for each other with a hug or a kiss. They also text and

Facebook message each other. Additionally, Michael confirmed petitioner had helped him with his relationship with his father.

¶ 19 Mike's younger daughter, Caroline Fombelle, testified she loves petitioner and is close to her. Caroline could only recall one time when she was at her father's and petitioner spent the night and only two times when her father said he was spending the night at petitioner's. She also noted her father and petitioner do not have dinner together most nights. Caroline thought they dined together about once a week. Caroline had been swimming at petitioner's pool.

¶ 20 Mike's older daughter, Paige Fombelle, testified to eating dinner with her father and petitioner at both her father's home and petitioner's, but mostly at her father's. She had swum at petitioner's home a couple of times. However, Paige does not have access to petitioner's home. On the one occasion, Paige checked on petitioner's dogs, and petitioner gave her a garage door opener. Paige too felt close to petitioner and will occasionally text her.

¶ 21 Petitioner called respondent as an adverse witness on the contempt petition. Respondent did testify he took petitioner's January 2012 e-mail as a confirmation petitioner was cohabitating with Mike.

¶ 22 At the conclusion of the September 12, 2012, hearing, the trial court found petitioner and Mike's relationship was not a husband-and-wife-like one and denied respondent's petition to terminate maintenance. The court also found respondent was in civil contempt for failure to comply with the dissolution judgment's maintenance provision. It ordered respondent to pay $28,000 to petitioner for unpaid maintenance and $750 in attorney fees. On October 4, 2012, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus we have jurisdiction under Illinois Supreme Court

Rule 301 (eff. Feb. 1, 1994).

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent asserts the trial court erred by denying his petition to terminate maintenance. Petitioner contends the court properly found her relationship with Mike was a dating one.

¶ 25 In reviewing a judgment on a petition to terminate maintenance, we will not disturb the trial court's judgment unless the court abused its discretion or the factual predicate for the decision was against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 523, 819 N.E.2d 714, 733 (2004). A reviewing court gives great deference to the trial court's factual findings because the trial court has the best position to weigh the witnesses' credibility. *Snow v. Snow*, 322 Ill. App. 3d 953, 956, 750 N.E.2d 1268, 1270 (2001). Moreover, this court does not reweigh the evidence, assess the testimony's credibility, or set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513, 604 N.E.2d 1069, 1071 (1992).

¶ 26 Given the unique nature of interpersonal relationships, each case seeking termination of maintenance based on a recipient's conjugal cohabitation rests on its own facts. *Bates*, 212 Ill. 2d at 524, 819 N.E.2d at 733. Our supreme court has equated a conjugal relationship to a husband-and-wife-like relationship, regardless of whether sexual relations took place. *In re Marriage of Sappington*, 106 Ill. 2d 456, 467, 478 N.E.2d 376, 381 (1985). In deciding whether a relationship is a husband-and-wife relationship, courts must look to the totality of the circumstances. *In re Marriage of Herrin*, 262 Ill. App. 3d 573, 577, 634 N.E.2d 1168, 1171 (1994). Courts have considered various factors defining the couple's relationship, including (1)

the relationship's length; (2) the amount of time the two spend together; (3) the nature of the activities they did together; (4) the interrelation of their personal affairs; (5) their vacationing together; and (6) their spending holidays together. *Herrin*, 262 Ill. App. 3d at 577, 634 N.E.2d at 1171. The party seeking termination of maintenance bears the burden of demonstrating the former spouse is involved in a continuing, conjugal relationship. *Bates*, 212 Ill. 2d at 524, 819 N.E.2d at 733.

¶ 27 Here, the parties do not dispute they agreed to maintenance in the Agreement. Therefore, the Agreement's terms are binding on the parties and the court. 750 ILCS 5/502(b) (West 2008). Section 6.03 of the Agreement applies when petitioner "co-habitates with another person on a resident conjugal basis, regardless of whether or not wife and her co-habitant retain separate households." Thus, respondent had to show petitioner and Mike's relation was a husband-and-wife-like relationship, and the fact petitioner and Mike maintained separate residences does not support the nonexistence of a husband-and-wife-like relationship.

¶ 28 We begin by noting that, while the hearing was only one day, the trial court heard a lot of detailed evidence about Mike and petitioner's relationship and her relationship with Mike's family. It is unrealistic for the trial court to address every detail of their relationship in discussing its reasoning for denying respondent's petition. We too will not cover every detail in our written order, but we have considered all of them.

¶ 29 As to the factors set forth in *Herrin*, 262 Ill. App. 3d at 577, 634 N.E.2d at 1171, the length of Mike and petitioner's relationship favors a marriage-like relationship. However, many people date more than three years, and thus the trier of fact could have given little weight to this factor. The amount of time petitioner and respondent spend together is not indicative of a

marriage-like relationship. The evidence showed that, during most weeks, they spent a few hours a day together three to four times and rarely spent the night together. As to Mike and petitioner's activities, they were mostly social and fun, like a dating couple. Besides Mike working on a few things around petitioner's house and both of them checking on each other's pets, the evidence did not show they did household chores together like cleaning, laundry, paying bills, running errands, and the other mundane aspects of married life. Their personal affairs were mostly separate as well. The interrelationship was only really seen with regard to their relationship with their families and Mike's friends. Their finances were separate as they maintain separate accounts, any funds expended on the other person's needs were reimbursed, and money spent on their activities was shared as equally as possible. They also rarely drove each other's vehicles. Also, no evidence was presented of joint ownership.

¶ 30 The remaining two factors, holidays and vacations, are more suggestive of a marriage-like relationship as Mike and petitioner spent most of them together. However, even with vacations, Mike and petitioner split the costs evenly and took other people with them. Moreover, Mike testified he had taken five to six trips without petitioner over the past three years, which is twice as many vacations as those he took with her. Thus, while Mike and petitioner were close to each other and each other's families, the time they spent together and the intertwining of their affairs was nothing like that of a married couple.

¶ 31 Additionally, we note the facts of this case are distinguishable from the ones cited by respondent. Unlike this case where Mike and petitioner saw each other around three times a week, the maintenance recipient and the alleged cohabitant in those cases either lived in the same home together or saw each other every day. See *In re Marriage of Susan*, 367 Ill. App. 3d 926,

930, 856 N.E.2d 1167, 1171 (2006); *In re Marriage of Toole*, 273 Ill. App. 3d 607, 610, 653 N.E.2d 456, 459 (1995); *Herrin*, 262 Ill. App. 3d at 577, 634 N.E.2d at 1171; *In re Marriage of Roofe*, 122 Ill. App. 3d 56, 57, 460 N.E.2d 784, 785 (1984). In the *Susan* case, while the maintenance recipient and the alleged cohabitant maintained separate residences and did not commingle their financial matters, the two had spent most evenings together, including over-night, and the trial court noted the maintenance recipient presented no evidence she ever spent an evening alone. *Susan*, 367 Ill. App. 3d at 928, 856 N.E.2d at 1170. That is vastly different from this case where petitioner and Mike rarely spent the night together, only saw each other three to fives times a week (around 6 to 15 hours a week), and petitioner presented evidence of doing things with her friends and coworkers without Mike. Moreover, unlike here, the alleged cohabitant in *Herrin* gave out the maintenance recipient's telephone number to his clients, drove the maintenance recipient's car, ate most meals with the maintenance recipient, and had his van and computer financed by loans the recipient obtained. *Herrin*, 262 Ill. App. 3d at 577, 634 N.E.2d at 1171.

¶ 32 Moreover, we note no evidence was presented the separate residences were a sham to avoid the termination of maintenance. While all legal adults, Mike's three children were still pursing their educations and occasionally staying with him. He had a clear and legitimate reason for maintaining his own residence. Moreover, respondent cites no cases where the couple at issue were found to be engaged in conjugal cohabitation where the parties spent the night together and saw each other as little as Mike and petitioner did. Looking at the totality of the circumstances, enough evidence existed from which the trial court could reasonably conclude petitioner and Mike were not cohabitating under the Agreement.

¶ 33 Accordingly, we find the trial court's conclusion petitioner and Mike were not in a marriage-like relationship was not against the manifest weight of the evidence, and thus the court did not abuse its discretion by denying respondent's petition to terminate maintenance.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 36 Affirmed.