2015 IL App (2d) 121150-U
No. 2-12-1150
Order filed January 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF TERESA M. LEDERER, Petitioner-Appellee, and WILLIAM G. LEDERER, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 00-D-94 Honorable Donna-Jo Vorderstrasse, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that Teresa was not engaged in resident, continuing, conjugal cohabitation was not against the manifest weight of the evidence. The trial court also did not err in ruling that William had not paid the total maintenance due under a July 2005 agreed order. However, the trial court erred in imposing compound interest, rather than simple interest, on the maintenance arrearage. Therefore, we affirmed in part, vacated in part, and remanded the cause.

¶ 2 The marriage of respondent, William G. Lederer, and petitioner, Teresa M. Lederer, was dissolved on March 20, 2001. The dissolution judgment provided for maintenance for Teresa which would cease upon the first to occur of certain conditions, including "residing with an

unrelated person on a continuing conjugal basis[.]" In 2010, William filed a petition to terminate maintenance on this basis, and Teresa filed a petition for rule to show cause, alleging that William had failed to make required maintenance payments. The trial court found that: (1) William did not meet his burden of proving that Teresa was engaged in a *de facto* husband and wife relationship, and (2) William owed a maintenance arrearage of $164,908.31, including interest, to Teresa. William appeals from these findings.

¶ 3 We conclude that the trial court's finding that Teresa was not in a resident, continuing, conjugal relationship was not against the manifest weight of the evidence. We also conclude that the trial court did not err in ruling that William failed to pay the total maintenance due under a July 2005 agreed order. However, we agree with William that the trial court should have imposed simple interest on the maintenance arrearage, rather than compound interest. Therefore, we affirm in part, vacate in part, and remand the cause.

¶ 4 I. BACKGROUND

¶ 5 A. Prior Orders

¶ 6 The 2001 dissolution judgment incorporated the parties' marital settlement agreement, which provided that Teresa would receive monthly maintenance of $5,500, regardless of any income she earned. The amount of maintenance was "predicated" upon William's gross annual income of $215,000 plus employee benefits provided by his closely held corporation, Ciex, Inc. The maintenance obligation was to terminate upon Teresa's death, remarriage, or her "residing with an unrelated person on a continuing conjugal basis[.]" Teresa also received 228 acres of land in North Carolina.

¶ 7 On July 20, 2005, the trial court entered an agreed order reducing the amount of maintenance. The order stated that the prior amount of $5,500 per month was based upon

William's $210,000 base salary,[1] and that the maintenance amount represented 31% of that salary. The order stated that William's salary from Ciex had decreased to $126,000 and that 31% of this salary would equal $3,300 per month.[2] The order provided that "commencing November 1, 2004 and until a termination event as provided in the Judgment or until further order of [the] court, William shall pay Teresa on the first of the month the amount of $3,300 per month as and for base maintenance; and thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base." The order further stated that William "shall pay Teresa as and for additional maintenance thirty-one percent (31%) of any bonus(es) received by William, payable within seven (7) working days after his receipt ***." Also within that time frame, William was to provide Teresa's attorney with verification of date(s) and amount(s) of any bonus and/or increase in base compensation.

¶ 8 On May 17, 2010, William filed a petition to reduce or modify maintenance, alleging that his income had decreased from $10,500 per month to $7,333 per month and that the value of the land Teresa received in the dissolution judgment could be sold for $1.1 to $1.2 million. Teresa did not respond to the petition. On August 11, 2010, a default judgment was entered finding that Williams' current base monthly salary was $8,333, and that commencing May 1, 2010, he would be required to pay Teresa 31% of this amount, totaling $2,583 monthly. The order further stated that beginning May 1, 2010, William was to pay Teresa, as additional maintenance, 31% of any bonuses he received, "provided, however, in the event Ciex need[ed] to purchase a capital asset (i.e. new computer, research and development, etc.) that cost shall be

[1] The original judgment actually stated that William's annual base salary was $215,000.

[2] We note that 31% of $126,000 would equal $3,255 per month.

permitted to be deducted against the net bonus to William after federal, state, FICA, medicare, so long as it does not exceed fifty percent (50%) of the net bonus to William."

¶ 9 B. Petitions at Issue in the Instant Appeal

¶ 10 Later that year, on December 6, 2010, William filed a petition to terminate maintenance retroactive to June 24, 2002, alleging that Teresa had been residing with Lee Bentz on a resident, continuing conjugal basis. William requested that he be reimbursed $301,400 for past maintenance payments.

¶ 11 The following day, Teresa filed a petition for rule to show cause and for attorney fees, alleging in count I that there was a maintenance arrearage of $6,749 as of November 30, 2010. Count II of the petition sought review of the August 2010 default judgment.

¶ 12 Teresa filed a second petition for rule to show cause and for attorney fees on April 15, 2011. She alleged that under the 2005 judgment, William was to pay $3,300 per month plus 31% in any incremental increase in his pay and his bonuses, based on a monthly income of $10,500. Teresa alleged that since that time, William had received substantial additional income over his base income of $10,500 but failed to pay any additional maintenance.

¶ 13 On January 5, 2011, William filed a motion to dismiss Teresa's original petition for rule to show cause. The trial court denied the motion as to count I on March 9, 2011. Teresa voluntarily withdrew count II of the petition.

¶ 14 On May 4, 2011, William filed a second petition to terminate maintenance based on Teresa's alleged relationship with Lee. The petition also sought to terminate maintenance based on a substantial change in circumstances, alleging that Teresa was financially self-supporting and no longer needed maintenance.

¶ 15 On June 29, 2011, William filed a motion for summary judgment. It is not clear from the record whether this motion was subsequently withdrawn or denied.

¶ 16 A trial took place on four different dates in July and August, 2011; a court reporter was not available on the first date, so a bystander's report for that day was later filed.

¶ 17 C. Trial Court's Findings

¶ 18 1. Whether a *de facto* Husband and Wife Relationship Existed

¶ 19 The trial court issued a detailed written order on March 6, 2012, finding in relevant part as follows. Under section 501(c) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/510(c) (West 2010)), the obligation to pay future maintenance terminates if the receiving party cohabits with another person on a resident, continuing, conjugal basis. In determining whether such a relationship exists, the trial court looks at the totality of the circumstances, including the following six factors: (1) the relationship's length; (2) the amount of time the former spouse and third party spend together; (3) the nature of the activities they engage in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together.

¶ 20 Regarding the first factor, Teresa had gone to college with Lee but had not contacted him in over 30 years. Before her divorce was finalized, Teresa reconnected with him and began a renewed friendship. Lee testified that Teresa was in really " 'bad shape and needed a friend' " during and after the divorce. They both testified that they remain good friends and business associates to this day.

¶ 21 Teresa was awarded 228 acres of vacant land in North Carolina in the divorce, and she moved to North Carolina in 2001 after the divorce was finalized. Before that, in November 2000, Lee purchased property at 114 Florence Street in Forest City, North Carolina, which he

later leased to Teresa. At the time, Lee was living in California and going through his own divorce, which was finalized in June 2002. Lee moved to North Carolina and began residing at 571 Freewill Baptist Church Road in Forest City in 2003. He lived there until April 2009, when he moved to Washington state, where he was currently living.[3]

¶ 22 Lee owns Golden Valley Realty in Rutherford County in North Carolina. His business leased a commercial location on Highway 64 from Golden Valley Properties, which was solely owned by Teresa. Since 2009, Lee resides at this location when he returns to North Carolina for business. Teresa manages Golden Valley Realty as a licensed broker when Lee is in Washington. After Lee moved to Washington, Teresa and Lee maintained daily contact through e-mails and telephone calls. Lee travels to North Carolina about twice a year and hopes to move back there. The length of the relationship factor favored a finding of resident, continuing, conjugal cohabitation, as Teresa and Lee were involved in a stable, ongoing, continuous relationship, with no termination date contemplated.

¶ 23 As for the nature of activities engaged in, both Teresa and Lee testified that they were sexually intimate in the period between 2000 and 2002 when Lee would visit North Carolina looking for property. Lee testified that before he bought his residence on Freewill Baptist Road, he stayed with Teresa at the Florence Street property that he owned and leased to her. Lee believed that he stayed there two to three times over the two-year period for no more than one week at a time. Teresa testified that he stayed there three times, not for more than a few days at a time, and that he stayed in a separate partitioned area. Lee testified that from 2003 to 2007, he

[3] Lee testified in his deposition that he sold the Florence Street property in March or April 2008 and lived in the real estate office building (discussed *infra*) before moving to Washington state in April 2009.

had his own residence in North Carolina and that Teresa never spent the night there but, on occasion, he would stay at Teresa's house if she asked, and " 'it might be intimate. It wasn't always, but sometimes it was just somebody to hold onto.' " Both Teresa and Lee testified that from June 2002 to the present, they attended one concert together; attended two energy conservation expositions together; drove together to attend real estate classes to become brokers; drove together to a pottery festival; attended the same realtor luncheons and the same Golden Valley Community Club meetings; occasionally had lunch together when Lee was working at his LED lighting business; had dinner together one to three times per year; and would occasionally explore land together for their real estate business.

¶ 24 Both Teresa and Lee testified that they never went to movies, grocery stores, or church together, and they never exchanged gifts or greeting cards on holidays. Lee testified that he may have taken out garbage for Teresa at the Florence Street property a couple of times if he noticed it was full when he was there working, and he may have done yard work a couple of times, but otherwise he and Teresa never shared household chores or household expenses. Teresa testified that she never cooked or did laundry for Lee.

¶ 25 Teresa and Lee were consistent in their testimony that they were good friends and business associates. Testimony from evidence depositions of North Carolina witnesses supported this characterization, rather than an ongoing intimate relationship. Bernice Kaut testified that she had never seen them outside of the real estate office. Randy Neyere testified that he had been to Teresa's home and never saw anyone else there. Patti Ledford, Teresa's longtime neighbor, testified that she had never seen anyone other than Teresa coming or going from her home or doing yard work. Ronnie Porter testified that he knew Teresa and Lee as fellow realtors, had never seen them together except for realtor luncheons, and would

characterize their relationship as business and professional. Kathy Nance testified that Teresa and Lee were not in an intimate relationship, that they did not act like lovers, that she never saw them embrace or touch; and that they had only business connections.

¶ 26 The trial court stated:

> "Even though TERESA and Lee Bentz had intimate relations at the beginning of their renewed relationship, and perhaps a few times occasionally since 2003, TERESA and Lee Bentz never resided in the same household for any length of time. Taking the evidence in the light most favorable to WILLIAM, Lee Bentz may have stayed with TERESA for three (3) separate weeks when he was in town from 2000 to 2003 until he moved to his own residence in North Carolina. *** Other than sparse intimate relations, the testimony indicates a lack of other indicia of a de facto husband and wife relationship in evaluating the factor of the 'nature of activities engaged in.' "

Therefore, this factor did not favor a finding of resident, continuing, conjugal cohabitation.

¶ 27 On the subject of vacations and holidays, the only evidence even remotely related to vacations together were mostly business related, those being travel to realtor/broker training classes, two energy expositions, and a pottery festival. "All of these travels could hardly be called vacations and were at the most one county away." Lee's trips to North Carolina since his move to Washington were short in duration, infrequent, and logically related to his real estate business. They were not vacations like those of a husband-wife relationship. Lee and Teresa occasionally spent holidays together with other friends, specifically two Thanksgiving and one Christmas celebrations, and one anniversary party, over the last 10 years. There was no evidence to dispute their testimony that they usually did not see each other on holidays. Therefore, this factor did not favor a finding of resident, continuing, conjugal cohabitation.

¶ 28 Regarding the interrelation of their personal affairs and amount of time spent together, in November 2000 Lee purchased the property at 114 Florence Street, which was a 5,000 square foot vacant warehouse building, to operate an LED lighting business. Lee was still living in California at the time. He and Teresa talked about being in business together, and Teresa had an interest in a garden store. Lee testified that they wanted to create businesses they could each operate partially independently and partially cooperatively, and become rich in the process. When Teresa moved to North Carolina in 2001, she executed a written lease for 114 Florence Street. The lease contained an option to purchase the property for $85,000. Teresa made payments pursuant to the lease and paid her own utilities. She also spent $17,000 of her own money to convert one-third of the warehouse to a living area for herself. In exchange for Teresa's investment in the property and as " 'a kind of insurance,' " Lee transferred one-half interest in the property to her, later clarifying through another deed that the property was held in joint tenancy, with the right of survivorship. Lee testified that having a business interrupted by a partner's death would make it impossible to continue because the partner's share would be tied up in probate, so this was an " 'insurance policy' " to ensure that the business could continue. Teresa was going to do esthetic design for Lee's LED lights and design garden ornaments for the lights as well. Teresa and Lee both testified that they kept their finances separate and never maintained joint bank accounts, never paid each other's bills, and never commingled their funds. If they did pay a bill for the other person, it was immediately reimbursed. Teresa's bank account statements from 2004 to 2011 seemed to support that she and Lee did not share finances or personal expenditures.

¶ 29 In August 2002, Lee loaned Teresa $63,000 to pay off a loan of the 228 acres Teresa had obtained in the dissolution judgment. The promissory note stated that Teresa secured the loan

with her IRA accounts. She had made few, if any, payments towards the loan. Lee's testimony indicated that he was not concerned with the note's nonpayment because it was secured by the IRA, which still had a value of over $70,000. The evidence was not clear regarding whether the note was still secured by the IRA.

¶ 30 In September 2003, Lee purchased 17.13 acres adjoining Teresa's 228 acres. Lee testified that Teresa told him about the property, they both knew that the owners needed money, and he liked the view and hoped to build a house there one day. In December 2003 and early 2004, they purchased two parcels totaling 30 acres in Piney Knob for $70,000. The price was owner-financed with monthly $500 payments. They testified that they alternated monthly payments from their own funds until Teresa could no longer afford to in 2010 because William unilaterally ceased maintenance payments. The property's title was in joint tenancy with the right of survivorship. Lee testified that this was a business investment for them because they had discussed creating a wilderness camp for children on the land. In January 2005, Teresa purchased another 11 acres of vacant land in Piney Knob from her own funds.

¶ 31 In August 2005, Teresa created Golden Valley Properties, LLC, to allow her IRA to purchase real estate with seller financing. Golden Valley Properties purchased commercial property on Highway 64 in Rutherford County. Golden Valley Realty, owned by Lee, rents this property for $375 per month.

¶ 32 In April 2008, Lee sold his property on Freewill Baptist Church Road and moved to Washington. He testified that his plans for making money in real estate failed when the real estate market collapsed, and he ran out of money and had to get a job. Due to the move, Teresa helped run Golden Valley Realty. Lee gave her a limited power of attorney for real estate transactions for a defined time, and she became a signatory on his business accounts so she could

make deposits and pay bills. She completed some transactions for sale, and there was no evidence that she benefitted other than real estate commissions.

¶ 33 In June 2010, Teresa and Lee exchanged properties. Teresa transferred her one-half interest in 17 of the 30 acres in Piney Knob and five acres she owned in Tennessee to Lee in exchange for his one-half interest in the Florence Street property. The value of the properties transferred seemed appropriate for an exchange.

¶ 34 Teresa and Lee both testified that their estate plans were outdated because they no longer had joint tenancy property to protect anymore. Their last wills named each other executor and left joint tenancy real estate to each other. Lee testified that he left everything else to his children and other relatives. Lee also testified that Teresa was a partial beneficiary of life insurance after it paid off his ex-wife. After his ex-wife received her money, any remaining amount would be split between Teresa and Lee's son. Lee was unsure of the amount of money.

¶ 35 Lee and Teresa testified that they shared the same interest in environmental concerns, in preserving the land in North Carolina for future generations, and in restricting the land's use in sound environmental ways. They testified that their children would not necessarily be as careful with the real estate, which is why they wanted the other person to have the land if one of them died. Also, it was a business venture to them where they had each invested time and money which they wanted to preserve. At the current time, there was no longer joint tenancy property between Teresa and Lee. In November 2010, Teresa transferred her 228 acres to her son. She testified that she believed that he is now ready to take care of the land consistent with her wishes. She testified that she started the transfer process in early 2010 but needed numerous deed restrictions in place before the transfer could be complete.

¶ 36 Teresa and Lee both testified that they paid their own car insurance and exchanged cars for practical purposes. Teresa had been using Lee's Blazer truck in North Carolina because of the more challenging terrain and so she could take clients to view real estate and make money for Golden Valley Realty and herself as the agent/broker. Lee drove Teresa's Volkswagen Beetle while in Washington because it had less challenging terrain, and his job did not require him to have passengers.

¶ 37 Teresa and Lee saw each other daily at the Florence Street property after Lee moved to his house on Freewill Baptist Road. They worked at this location trying to start up the garden and LED lighting business. They testified that they would have occasional lunches and dinners. They also looked at property together for their real estate ventures. Outside of this, they did not spend much time together, as they had limited social engagements and rarely spent holidays together. The evidence showed that since Lee moved to Washington state, they talk several times a day every day. Teresa testified that they both have multiple health issues, so they talk every day for a wellness check. The testimony also indicated that most of their conversations involved real estate, contraction negotiations, computer problems, and related issues.

¶ 38 The two factors of the interrelation of personal affairs and the time spent together, especially the former, were the most significant factors in the case. There was no doubt that Teresa and Lee had been involved in numerous business dealings from 2002 on. They purchased a number of properties together, which they not only placed in joint tenancy, but also made sure that their wills provided for such an outcome. "It is not unusual for business associates to have reciprocal provisions in their wills." Teresa and Lee were credible in the majority of their testimony. They "minimized their loneliness and the value they each place on the friendship

they have with each other," though this was "understandable under these difficult circumstances."

¶ 39 The court further stated:

> "The court finds that TERESA and Lee Bentz have maintained their financial independence from each other. They have never commingled their monies. They pay their own bills. If small loans are made, they are paid back. Even the large loan of $63,000 made by Lee Bentz to TERESA is secured by TERESA'S IRA, at least the parties believe so. At every turn, they made efforts to stay professional in their business relationships. There was definitely a financial benefit to TERESA in getting a one-half interest in the Florence Street property back in 2002 but she invested in the development of the property and has maintained it for all these years. There may not have been a dollar for dollar exchange but TERESA and Lee Bentz felt the exchange was fair. When TERESA finally bought Lee Bentz out of that property, she gave him valuable property in exchange as fair consideration."

¶ 40 The trial court continued as follows. The dissolution judgment's language was unusual in that it allowed Teresa to earn money without affecting the maintenance payments, and this is what Teresa was trying to do. Outside of talking about their failed marriages and environmental concerns they shared, Teresa and Lee put all their efforts into their business ventures to earn money. In the early 2000s, many people invested in real estate with the goal of making money, only to find themselves in need of other income, like Lee. Lee and Teresa did not have joint accounts and did not comingle monies like a husband and wife would. Consideration of the factors of the interrelation of personal affairs and amount of time spent together did not favor a finding of resident, continuing, conjugal cohabitation.

¶ 41 The trial court concluded that considering the totality of the circumstances by examining the six factors outlined, William failed to meet his burden of proving a *de facto* husband and wife relationship between Teresa and Lee. Teresa and Lee had never resided together, and for many of the years at issue they resided in different states on different coasts. They never performed household tasks together, did not have joint accounts or comingle their monies, did not take vacations together, did not exchange gifts on holidays or birthdays, and rarely spent holidays together. All that was shown to the court was that they were trusted friends and business associates, whereas a *de facto* husband and wife relationship required more than involvement in financial transactions. Therefore, the trial court denied count I of William's petition. It also denied count II of the petition seeking termination based upon a substantial change in Teresa's financial circumstances, reasoning that the dissolution judgment allowed Teresa to seek employment or income without it affecting her maintenance.

¶ 42 2. Petitions for Rule to Show Cause

¶ 43 The trial court next addressed Teresa's petitions for rule to show cause, and we summarize its findings. Regarding the first petition, it was undisputed that William had not paid Teresa the required maintenance since August 2010, based on his unilateral determination that she was engaged in a resident, continuing, conjugal relationship. William's actions were in direct violation of a court order. He owed at least $48,077 from September 2010 through March 2012. William had not provided 2010 and 2011 corporate and personal income tax returns and could owe more money depending on his bonus income. William did not send his income tax returns to Teresa or her attorney as required by prior court orders. He testified that no one asked for them, but such a request was not necessary. For these two reasons, William was in indirect civil contempt of court under the first petition for rule to show cause.

¶ 44 As for the second petition for rule to show cause, Teresa had a "logical argument" that she was owed additional money under the July 2005 order stating that William would pay an additional " 'thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base.' " The order did not explain how to determine this amount. Teresa could not have presented this argument before due to William's failure to turn over tax returns as required in the 2005 order. The court was defining " 'incremental increase' " as anything paid by Ciex to William over the base salary outlined in the 2005 order of $126,000 per year. Teresa was entitled to 31% of that amount, as long as it had not been already paid to her as maintenance from bonus income. William was in indirect civil contempt under the second petition for rule to show cause based on his nonpayment of additional maintenance under the July 2005 order for the years 2005 to 2010. The court would hear arguments on calculating the arrearage at the next court date.

¶ 45 D. Post-Trial

¶ 46 After obtaining an extension of time, William filed a motion to reconsider on April 9, 2012, arguing that the trial court's finding that Teresa was not engaged in a resident, continuing, conjugal relationship was against the manifest weight of the evidence.

¶ 47 On May 18, 2012, the trial court ruled that the July 2005 order required William to pay Teresa "31% of Ciex's incremental increase in income after reasonable business [*sic*]."[4] The trial court also found that the maintenance arrearage from September 1, 2010, to May 1, 2012, totaled $53,243, and that "accrued interest" from December 31, 2005, totaled $111,665.31.[5] Therefore, it entered judgment against William for $164,908.31.

[4] Additional language in this sentence was crossed out.

[5] The trial court's October 16, 2012, order modified this language to state, " 'accrued

¶ 48 On June 18, 2012, William filed a motion for clarification and/or modification (motion for modification) of the May 18, 2012, order. He argued that: there were no pleadings, evidence, or closing argument as to the interpretation of the July 20, 2005, order, so the trial court erred in addressing the issue; the trial court erred in construing that order as allowing for William's base salary to be determined by 84% of Ciex's income from 2005 to 2010; and William should not have been found in contempt for failing to follow a vague order.

¶ 49 On July 11, 2012, Teresa filed a motion to dismiss William's motion to reconsider on the basis that it did not raise newly discovered evidence, changes in the law, or errors in the trial court's application of existing law. She also filed a petition for rule to show cause and for attorney fees, alleging that William had not yet begun paying the maintenance ordered in the May 2012 order.

¶ 50 On July 17, 2012, the trial court entered an agreed order by the parties. It stated that William would pay Teresa $2,583, which was not modifiable in amount or duration, from May 2012 until a termination event, which was the first to occur of the following: (1) William's death; (2) Teresa's death; (3) Teresa's remarriage; or (4) June 30, 2019. The order provided a schedule for the payment of the $164,908.31 judgment against William. William also agreed to pay $15,000 towards Teresa's attorney fees, with each party waiving any further claims for attorney fees in connection with pending petitions. The order further stated: "The Court shall hear argument on 8/17/12 at 9:00 a.m. on William's Motion to Reconsider and Teresa's Motion to Strike and Dismiss the same & William's motion for clarification and Teresa's response."

¶ 51 On August 8, 2012, Teresa filed a response to William's motion for modification, and she filed an amended response on August 10, 2012.

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interest and unpaid maintenance.' "

¶ 52 On August 17, 2012, the trial court denied Teresa's motion to strike and dismiss William's motion to reconsider the March 6, 2012, order. Teresa filed a response to William's motion to reconsider on September 13, 2012.

¶ 53 On October 16, 2012, the trial court held a hearing on William's motions. Regarding William's request to reconsider the finding that Teresa was not engaged in resident, continuing, conjugal cohabitation, the trial court stated that William was "misstating some of the facts as presented in the evidence here." The trial court stated that it found Teresa to be credible and that "she explained any inconsistencies in her testimony." It denied William's motion to reconsider.

¶ 54 On the subject of William's motion for modification, the trial court stated as follows. The August 11, 2010, order modified the July 2005 order regarding future maintenance, but the issue of whether all maintenance had been paid under the July 2005 order was not before the court in 2010. Regarding the base income imputed to William, Teresa argued that the July 2005 order effectively provided that William's income was 84% of Ciex's gross income, with the remaining 16% representing reasonable business expenses. The trial court could understand that William might argue that more than 16% should be deducted for reasonable and necessary business expenses, but it seemed like William was instead arguing that the trial court should just rely on his net income as reported in his income tax returns. However, William did not account for the fact that his company's revenues had increased by over $50,000 from the revenue the July 2005 order was based on, without any corresponding increase in maintenance. The best calculation of William's income under the language of the 2005 order was the one provided by Teresa. Still, William's point that the order's language could be confusing to a layperson was well-taken, so the trial court would not find that there was willful noncompliance on the issue. It

therefore discharged the contempt finding for the second rule to show cause, though still leaving in place its finding as to the maintenance arrearage owed.

¶ 55 William asked for clarification as to how the trial court was interpreting the language in the July 2005 order that he must also pay "thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base." The trial court responded:

> "I interpreted that as one and the same, that if he has an incremental increase through Cyex [*sic*], that that increases the amount of money that he has available to live on. That is how I'm interpreting the corresponding increase in William's base, because the base maintenance is different than this reference to William's base. It is what he has available to live on is what his net income would be for the maintenance purpose. And if there is an incremental increase in Cyex's [*sic*] income to him, he has an increase in his base."

¶ 56 William timely appealed.

¶ 57 II. ANALYSIS

¶ 58 A. Forfeiture

¶ 59 Teresa argues that William has forfeited various contentions on appeal because he failed to cite the pages of the record on which he relies. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."); *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 40 (2009) (the failure to comply with supreme court rules is grounds for disregarding the argument on appeal). While additional citations to the record would certainly have been helpful, we do not find William's brief so deficient as to justify disregarding any of his arguments on appeal.

¶ 60 A. Relationship Between Teresa and Lee

¶ 61 We next address William's challenge to the trial court's finding that he did not meet his burden of proving that Teresa and Lee were engaged in a resident, continuing, conjugal relationship.

¶ 62 Teresa argues that this argument is barred under the doctrine of release of errors, based on the July 17, 2012, agreed order. Teresa notes that under the original court orders, maintenance was not limited in duration and was modifiable. Teresa points out that the agreed order modified maintenance in that it provided for decreased monthly maintenance payments of $2,583, which "shall not be modifiable in amount or duration." The order also provided that maintenance would terminate on the first to occur of William's death, Teresa's death, Teresa's remarriage, or a set date, June 30, 2019. Teresa argues that these aspects benefitted William and put her at a disadvantage, so William cannot seek reversal of the trial court's determination that he did not prove that a *de facto* husband and wife relationship existed between her and Lee, because a reversal would terminate all maintenance retroactive to the date the relationship began.

¶ 63 The doctrine of release of errors bars a litigant from attacking a judgment on appeal if he has enjoyed the judgment's benefits and the opposing party would be at a distinct disadvantage if there was a reversal. *Ghantous v. Ghantous*, 2014 IL App (3d) 130792, ¶ 33. The key factor is the existence of a distinct disadvantage to the opposing party. *Id.* ¶ 34.

¶ 64 Here, the doctrine does not apply, as William is not attacking the July 2012 agreed order but rather the trial court's March 6, 2012, judgment and subsequent denial of his motion to reconsider. Of course, the July 2012 agreed order itself could have barred a challenge to the trial court's finding of no *de facto* husband and wife relationship, but the agreed order did not contain any such language. To the contrary, the agreed order expressly recognized William's unresolved

motion to reconsider seeking a reversal of the finding, as the agreed order states: "The Court shall hear argument on 8/17/12 at 9:00 a.m. on William's Motion to Reconsider and Teresa's Motion to Strike and Dismiss the same[.]" Teresa herself acknowledged that William's motion to reconsider was not moot, as she filed a response to the motion on September 13, 2012, and argued against the merits at the hearing. While the July 2012 agreed order could arguably require William to pay maintenance from May 2012 until the termination date of June 30, 2019, regardless of the outcome of this appeal,[6] it clearly does not prevent William from challenging the maintenance payments from 2002 until May 2012 based on the alleged *de facto* husband and wife relationship.

¶ 65 We now turn to the merits of whether the trial court erred in finding that William did not meet his burden of proving that Teresa had engaged in a resident, continuing, conjugal relationship with Lee. Section 510(c) of the Marriage Act states:

> "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*." (Emphasis added.) 750 ILCS 5/510(c) (West 2010).

[6] We do not definitively resolve this issue as we ultimately conclude that the trial court's finding that there was no *de facto* husband and wife relationship was not against the manifest weight of the evidence.

Here, the parties' marital settlement agreement similarly provides that maintenance will terminate if Teresa "resid[es] with an unrelated person on a continuing conjugal basis."[7]

¶ 66 The spouse seeking termination of maintenance has the burden of proving that the former spouse is involved in a *de facto* husband and wife relationship with a third party. *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929 (2006). Whether that burden has been met depends on the totality of the circumstances, considering the following factors: (1) the relationship's length; (2) the amount of time the couple spends together; (3) the nature of the activities they engage in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together. *Id.* No two personal relationships are alike, so every case in which termination of maintenance is sought presents a unique set of facts. *Id.* at 930. We will not disturb a trial court's finding regarding whether a *de facto* husband and wife relationship[8] exists unless that finding is contrary to the manifest weight of the evidence. *Id.* at 929-30. "A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Edmonds*, 2014 IL 117696, ¶ 35.

¶ 67 William cites *In re Marriage of Frasco*, 265 Ill. App. 3d 171 (1994), in arguing that he needed to establish only a *prima facie* case of a *de facto* husband and wife relationship, and then the burden shifted to Teresa to show that such a relationship did not exist. However, *Frasco* states that once the party paying maintenance has demonstrated that a *de facto* relationship exists, the maintenance recipient must demonstrate that the relationship was not the type

[7] The parties and the trial court treated this language in the marital settlement agreement as if it were identical to the statute's provision, so we likewise do so here.

[8] We also use the phrase "*de facto* husband and wife relationship" to refer to resident, continuing, conjugal cohabitation.

intended by the legislature to justify terminating maintenance. *Id.* at 176. *Frasco* does not stand for the proposition that the payor spouse needs only to make a *prima facie* case. Rather, it is well-established that the spouse seeking termination of maintenance has the burden of showing that the party receiving maintenance is involved in a *de facto* husband and wife relationship. See, *e.g.*, *In re Marriage of Bates*, 212 Ill. 2d 489, 524 (2004).

¶ 68 William also argues that Teresa's credibility was of paramount consideration because she was the only live witness testifying as to her relationship with Lee. William argues that her testimony was so improbable on some issues that she should have been deemed incredible overall. William argues that Teresa went so far as to lie under oath as to the car she drives and made many financial misrepresentations. Specifically, although Lee testified that he loaned her $63,000 on August 7, 2002, so that she could repay the mortgage on the 228 acres she owned, Teresa did not include this loan on a September 2002 loan application or in her September 2003 financial affidavit to the court. William argues that the financial affidavit also omitted her $70,000 one-half ownership in the Florence Street building, any " 'business' " ownership with Lee, and her ownership of land. William further argues that Teresa's 2011 financial affidavit omitted various business interests. William maintains that Teresa's explanation, that she did not include such amounts because there was no line item for real property, and that she did not disclose these holdings at her deposition because she was not asked, is disingenuous. He argues that Teresa's omission of assets worth over $700,000 was an intentional misrepresentation to the court so that she could continue receiving maintenance. He contends that she would have an even greater motivation to lie when she may have to repay over $300,000 she received from September 2002 through September 2010. William additionally argues that records show that Teresa and Lee spoke for 94 minutes over five calls on the day Lee's deposition commenced, on

a Friday, and for 165 minutes over 15 calls that weekend, before Lee's deposition resumed on Monday. William argues that the amount and duration of calls around the time of Lee's evidence deposition goes to Teresa's credibility.

¶ 69 Under the manifest weight of the evidence standard, we give great deference to the trial court's credibility determinations and will not substitute our judgment for that of the trial court because the fact finder is in the best position to evaluate the witnesses' conduct and demeanor. *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35. Here, we find no basis to disturb the trial court's assessment of Teresa's credibility. First, although William argues Teresa lied about the car she drives, we find no support in the record for this contention.[9] Second, the trial court stated that Teresa's explanation was reasonable that she did not include information about real estate in the financial affidavit because there was no line for real estate. Given that the marital settlement agreement did not allow for the termination of maintenance based upon Teresa's income or assets, we disagree with William that Teresa's explanation should automatically be discounted. Similarly, Teresa's net worth does not affect whether she was engaged in a *de facto* husband and wife relationship with Lee. Last, Teresa and Lee's phone calls during the time surrounding his deposition were largely consistent with their calling patterns in both amount and duration.

¶ 70 William additionally argues that the evidence shows that Teresa has been involved in resident, continuing, conjugal cohabitation with Lee, akin to a common law marriage, from 2000 to the present, in that: (1) they have been in an intimate, very emotional relationship since that time; (2) Lee left his wife in California and travelled to North Carolina to live with Teresa; (3)

[9] William's proposed language for large portions of the bystander's report was not approved by the trial court, and the omitted language may have included this disputed testimony.

they discussed that they could not marry because that would terminate Teresa's maintenance; (4) they have been sexually intimate; (5) the relationship is stable and ongoing with no termination contemplated, and with Lee intending to return to North Carolina; (6) they see each other as frequently as work allows and speak on the phone daily; (7) they attend concerts and events, spend holidays together, and travel; (8) Lee purchased the Florence Street Property for Teresa, putting utilities in her name, while his name is still on the phone and DSL service; (9) Lee did yard work and took out the trash; (10) the couple dined together and socialized "together with their club"; (11) Teresa held herself out to the public as Lee's partner; (12) Lee purchased other properties at Teresa's urging as joint tenants with rights of survivorship on property adjoining hers; (12) Lee spent all his money on real estate activities to "appease" Teresa, including five non-profitable real estate ventures, until he was overextended and had to move to Washington state for employment; (13) Teresa drives Lee's car; (14) Lee loaned Teresa money but has not sought repayment, even though he ran out of money; (15) Lee made provisions for Teresa in his will and maintains Teresa as a death beneficiary of his insurance policies, "to the exclusion of his children"; and (16) Teresa's will makes similar provisions for Lee's benefit.

¶ 71 We note, as the trial court did in ruling on William's motion to reconsider, that William clearly misstates some of the evidence and draws some inferences not supported by the evidence. For example, there is no support for the proposition that Lee left his wife in order to live with Teresa. Rather, Lee testified that he began having marital problems in 1984, he was divorced in June 2002, and he moved out of California in 2003 because his ex-wife kept interfering in his life. He also did not live with Teresa when he moved to North Carolina but rather had his own residence. Moreover, Lee testified that he and Teresa never discussed marrying each other. Lee testified that they talked about each other's prior marriages a lot, and any other discussion would

have been that they could "never get married, just based on what [they] had gone through in [their] previous marriages[.]" Teresa testified that they did not discuss marriage or that she would lose her maintenance if she got married. Also, while the evidence showed that Teresa and Lee saw each other daily at the Florence Street property, out of which they both ran businesses, and also explored real estate together, this is not akin to "see[ing] each other as frequently as work allows," as William states. The evidence also does not support the statement that Lee purchased the Florence Street property just for Teresa, as he also ran his business out of the facility, received rent from Teresa, and later received other property in exchange for his share of the Florence Street property. The evidence further does not support the proposition that Teresa held herself out to the public as Lee's romantic partner; in fact, none of the North Carolina witnesses deposed by William thought that Teresa and Lee had anything other than a business relationship. There is also no evidence that William was trying to "appease" Teresa by buying property. Finally, the statement that Lee designated Teresa as a death beneficiary of his insurance policies, "to the exclusion of his children," is contradicted by the record. Lee testified that he had a $75,000 insurance policy that would pay a loan and certain other costs for his ex-wife, and the excess of the policy would be split between Teresa and his son. We admonish William's counsel that her misrepresentations of the evidence detract from rather than enhance William's arguments on appeal.

¶ 72 Other statements made by William, although not directly misstating the record, require some clarification. Although William states that Teresa and Lee have been in an "intimate" relationship since 2000, the testimony indicates that they never lived together and only occasionally spent the night together. The trial court characterized their intimate relations as

"sparse," stating that they had some intimate contact at the beginning of their relationship and occasionally since 2003. This finding is not against the manifest weight of the evidence.

¶ 73 William also states that Teresa and Lee attend concerts and events, spend holidays together, and travel. He argues that Lee traveled across the country to spend holidays with Teresa. However, the record supports the trial court's finding that the "travels" to realtor/broker training classes, two energy expositions, and a pottery festival, were local and largely business-related. In 10 years, they had spent two Thanksgivings and one Christmas holiday together, with friends. The woman hosting the parties testified that they were potluck events and that she would invite "whoever is alone and solo[.]" She testified that she would have invited both Teresa and Lee because they were both "solo." Consideration of this factor strongly weighs against a *de facto* husband and wife relationship.

¶ 74 As for William's statement that Lee took out the trash and did yard work at the Florence Street property, it must be considered in the context that Lee also worked on his LED business out of that property (Teresa lived in a separate partitioned area). Lee testified that he sometimes did yard work on the property but mostly hired it out. He also testified that he took out trash from the kitchen area, which was also partitioned from Teresa's living quarters, only if the trash was full and he could not put more in it.

¶ 75 Finally, to the extent that Teresa and Lee dined and socialized together, the trial court found that they had dinner together one to three times per year, attended the same realtor luncheons, and went to the same Golden Valley Community Club Meetings. William does not challenge these specific findings.

¶ 76 William argues that the trial court should have drawn a negative inference from Teresa's failure to produce her Google e-mails and her estate plan. Prior to trial, William filed a motion

in limine seeking such an adverse inference. The trial court took the motion with the trial and subsequently denied it, stating that Teresa testified that her will was no longer in effect and that she no longer had a copy of it. The court stated that it was "satisfied" with Teresa and Lee's testimony that their wills had named each other executor and left joint-tenancy property to each other. A decision of whether to grant a motion *in limine* is within the trial court's sound discretion, and the trial court's ruling will not be disturbed on appeal unless it abused its discretion. *Taylor v. Board of Education of the City of Chicago*, 2014 IL App (1st) 123744, ¶ 45. Given that Teresa admitted to naming Lee in her will, and that certain e-mails were disclosed, we find no abuse of discretion in the trial court's ruling.

¶ 77 William additionally argues that the trial court erred in finding that Teresa and Lee maintained financial independence from each other. William argues that although the trial court found that any small loans were repaid, Lee was not sure if the document he produced reflected all such transactions. William further points to Lee's testimony that the $63,000 he gave to Teresa in 2002 was a loan secured by Teresa's IRA account. He argues that Lee moved to Washington to get a job due to financial need yet never sought repayment of the loan, and he "also apparently never knew" that Teresa had actually used her IRA funds to buy the Golden Valley Properties, LLC, parcel. William maintains that the evidence shows that the promissory note states that Teresa will make monthly $650 payments towards the loan, yet she never did so. William also argues that Lee is paying Teresa $375 per month for rent for his Golden Valley Realty business, totaling $17,350 from December 15, 2006, through October 13, 2010, yet Lee's business is generating no income. William argues that the only reasonable conclusion is that they are using the rent as an excuse for Lee to give Teresa money. William argues that Teresa also declared a $7,320 profit from Golden Valley Realty on her 2010 federal income tax return,

but that such a profit should have been declared by Lee. William argues that the return also does not list the "$375 rent which she claims she paid to Golden Valley Properties, LLC."

¶ 78 Taking the last point first, Teresa owned Golden Valley Properties and therefore would not be paying rent to it. It would make sense for Teresa to have some income from Golden Valley Realty because she acted as a broker for the agency in selling some properties while Lee was in Washington. The trial court found that the parties believed that the $63,000 loan was still secured by Teresa's IRA, and this finding is consistent with the evidence, so whether it was actually secured by the IRA is not at issue. We agree with William that Lee did not demand payment on his loan to Teresa even when he used up much of his own financial reserves and had to move to get a job, but it is not clear that Teresa had enough liquid assets to pay off the loan, and Lee would still have had to find a means to generate additional income. Lee did not know if his records left out any small loans, but there was no indication that small loans were not repaid.

¶ 79 Finally, Lee was never asked why he continued to pay rent to Teresa for Golden Valley Realty even though the business was not making money, but Lee's testimony indicated that he left North Carolina only because his business ventures were not successful and he needed income, and that he hoped to return to North Carolina, presumably in part to continue with his businesses. Indeed, the trial court found that Teresa and Lee had put a great deal of effort into their business ventures to earn money. Golden Valley Realty, through Teresa, also engaged in a few transactions while Lee was living out of state. Therefore, Lee could be continuing to pay rent because he did not want to give up on his real estate business. In other words, we disagree with William's argument that the only reasonable explanation for the continuance of rent payments was as an excuse to give Teresa money.

¶ 80 William contends that the mere fact that Lee and Teresa have reciprocal wills, with Teresa also being a beneficiary of Lee's life insurance, demonstrates that they are far more than business partners. William also points to their placing real estate in joint tenancy with rights of survivorship. William argues that their decision to make provisions for one another after death shows their devotion to each other as "soul mate[s]." William argues that there is no support for the trial court's statement that it is not unusual for business associates to have reciprocal provisions in their wills, and he argues that the trial court erred in trivializing the mutual wills, life insurance, and joint tenancies with rights of survivorship. William maintains that even the trial court had to admit that Teresa and Lee have shared their lives and finances for the last twelve years, with their relationship being stable and ongoing into the future. William argues that even though Teresa and Lee do not live in the same state, that fact does not translate into not being engaged in a resident, continuing, conjugal relationship, as spouses may reside in different states or be serving in the armed forces abroad but maintain close and continuing contact through e-mails, phone calls, and in-person travel, as Teresa and Lee have done here.

¶ 81 As Teresa points out, although William discounts her and Lee's testimony that they had joint tenancy with rights of survivorship for business purposes, and the trial court's statement that it is not unusual for business associates to have reciprocal will provisions, the North Carolina statute governing joint tenancy has specific language for business owners:

> "Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: *Provided, that estates held in joint tenancy for the purpose of carrying on and*

> *promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable the surviving partner to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business* ***." (Emphasis added.) N.C. Gen. Stat. § 41-2 (2012).

Further, Teresa and Lee did not put all of their property in joint tenancy, but rather only those that were at least arguably business and/or conservation-related. We have already addressed the issue of Lee's life insurance and do not discuss it further. Contrary to William's argument, the trial court did not find that Teresa and Lee shared their lives and finances but rather found that they did not spend much time together outside of their business interests and had maintained financial independence from each other.

¶ 82 In the end, while is clear that Teresa and Lee have a close relationship and talk at length daily, the question is whether they were engaged in resident, continuing, conjugal cohabitation. The evidence showed that Teresa and Lee did not spend much time at each others' residences, as: Lee only stayed with Teresa a few times from 2000 to 2002 when he visited North Carolina; from 2003 to 2008 Lee would only occasionally stay at Teresa's house; and following the move to Washington, Lee would come to North Carolina twice per year for one to two weeks at a time, which he testified was to take care of his property, and he would not stay with Teresa. They did not engage in household activities together such as cooking, cleaning, laundry, or yard work. They rarely went out to dinner together and their social activities were almost all exclusively business-related. The evidence also showed that they did not spend many holidays together, give each other gifts, or travel together for vacation. Friends and business contacts thought that they were business partners rather than a couple. Teresa and Lee maintained separate financial

accounts. They did hold various properties in joint tenancy, but as stated, much of these were arguably business and/or conservation related. Even otherwise, this issue, along with Teresa's being a potential partial beneficiary of Lee's life insurance policy, must be considered in conjunction with all of the other circumstances. Considering the totality of the circumstances, in light of the six factors previously listed, we conclude that the trial court's determination that there was no *de facto* husband and wife relationship was not against the manifest weight of the evidence.

¶ 83 We find this case readily distinguishable from the cases deemed analogous by William. In *In re Marriage of Herrin*, 262 Ill. App. 3d 573, 575 (1994), the man slept at his own residence almost all of the time, but he typically stayed with the ex-wife until 10:30 p.m. each night, ate most of his meals at her residence with her and her children, spent most vacations and holidays with her, and admitted that he loved her and had discussed marriage with her. The ex-wife had also loaned the man money. *Id.* at 576-77. Here, in contrast, Teresa and Lee rarely spent time at each other's residences, did not vacation together, rarely spent holidays together, and testified that they never discussed marrying each other.

¶ 84 In *Frasco*, 265 Ill. App. 3d at 176-77, the man and ex-wife did not have a sexual relationship, but they lived together, divided household chores, ate all of their meals together, had a joint bank account in which they comingled funds, were demonstrably affectionate toward one another, exchanged gifts, and spent holidays together. Virtually none of these circumstances are present here.

¶ 85 William cites *In re Marriage of Lambdin*, 245 Ill. App. 3d 797, 804 (1993), for the proposition that factors supporting a finding of a *de facto* husband and wife relationship include sexual relations, dining, vacations, ownership of real estate, and joint bank accounts. We note

that the *Lambdin* court discussed these factors, along with others, in discussing the relationship between the ex-spouse and the third party, and it ultimately determined that the trial court's decision that there was no resident, continuing, conjugal relationship was not against the manifest weight of the evidence. *Id.* Even otherwise, the sexual relations between Teresa and Lee were found to be "sparse," they rarely ate dinner together, they did not vacation together, and they did not have joint bank accounts.

¶ 86 Ultimately, "[e]ach case seeking a termination of maintenance based on the recipient spouse's conjugal cohabitation rests on its own unique set of facts." *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 189 (2004). For the reasons discussed, the trial court's decision that Teresa and Lee were not engaged in a resident, continuing, conjugal relationship was not against the manifest weight of the evidence.

¶ 87 B. Maintenance Arrearage

¶ 88 We now turn to William's argument that the trial court erred by ordering him to pay a maintenance arrearage and accrued interest totaling $164,908.31. As stated, Teresa filed two separate petitions for rule to show cause. The first petition alleged that there was a maintenance arrearage of $6,749 as of November 30, 2010. The trial court stated in its March 6, 2012, order that it was undisputed that William had not paid Teresa maintenance since August 2010 based on his unilateral determination that she was engaged in a *de facto* husband and wife relationship. In its May 18, 2012, order, the trial court found that the maintenance arrearage from September 1, 2010, to May 1, 2012, (when maintenance under the July 2012 agreed order began) totaled $53,243. William does not directly contest this finding on appeal.

¶ 89 In Teresa's second petition for rule to show cause, she alleged that William had not paid the total maintenance due under the July 20, 2005, agreed order. This order stated that beginning

November 1, 2004, William would pay base maintenance of $3,300 per month plus "thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base." William was also to pay 31% of his bonuses. This order was in effect until May 1, 2010, at which point the maintenance provisions of the August 11, 2010, order controlled. William paid $3,300 monthly during the majority of the period of November 2004 to April 2010, along with a few other payments representing 31% of his bonus income. The trial court ultimately found that William had not been paying the total amount required under the July 2005 order, and that he owed $111,665.31 for a maintenance arrearage and interest for the period of "12/31/05 forward" (effectively until April 30, 2010). It is this maintenance ruling that William challenges on appeal.

¶ 90 William argues that the trial court violated his due process rights because the first notice he had that the trial court was interpreting the July 20, 2005, agreed order was its ruling on March 6, 2012, after the trial.

¶ 91 In the trial court, William argued in his motion for modification that there were no pleadings, evidence, or closing argument as to the construction of the July 2005 order, but he did not frame the issue as a constitutional violation. As Teresa points out, in civil cases, the failure to present a constitutional issue to the trial court forfeits the issue for appeal. *Sherman v. Indian Trails Public Library District*, 2012 IL App (1st) 112771, ¶ 21. Even otherwise, Teresa's second petition for rule to show cause, filed on April 15, 2011, specifically referenced the July 2005 order and argued that William had received substantial additional income over his base income of $10,500 per month but had failed to pay her any additional income as required by that order. Therefore, William's lack of notice argument fails.

¶ 92 For the same reason, we reject William's contention that Teresa first raised the issue of money owed under the July 2005 order in her closing argument, which he argues was in violation of section 510(a) of the Marriage Act. Moreover, section 510(a) discusses a modification of maintenance, whereas here the trial court was enforcing maintenance previously-ordered. 750 ILCS 5/510(a) (West 2010). Similarly, William's argument that the trial court wrongfully *sua sponte* interpreted the language in the July 2005 order is without merit, as the trial court necessarily had to interpret the order to address Teresa's claim that William had not paid her all of the money due under the order.

¶ 93 We next look at William's argument that the trial court's 2012 retroactive interpretation of the July 2005 order wrongfully "leapfrog[ed]" the August 11, 2010, order, thereby impermissibly modifying the August 2010 order. William notes that the August 2010 order included the finding that "[f]rom and since November 2004,[10] William has paid Teresa permanent maintenance in the amount of $3,300 per month, predicuated [*sic*] upon William's annual gross income, plus the business expenses and employee benefits provided to William by Ciex, Inc." The order stated that "the letter agreement of the parties in 2004 [*sic*] provided William to pay Teresa Thirty-One Percent (31%) of William's gross annual base salary." William argues that by the August 2010 order's express terms, the July 2005 order was fully satisfied. He argues that it is therefore *res judicata* as to the issue of possible underpayments before the August 2010 order.

¶ 94 We disagree. Notably, the August 2010 order stated that William had paid Teresa maintenance of $3,300 per month since November 2004, but it did not state that this was in full satisfaction of the July 2005 order. The August 2010 order also stated that the agreed order

[10] The July 2005 order's maintenance provisions were retroactive to November 1, 2004.

provided for him to pay Teresa 31% of his gross annual base salary, but it did not purport to be interpreting William's entire maintenance obligation, as, indeed, it does not even mention the additional maintenance of 31% of any bonuses. Under the doctrine of *res judicata*, a final judgment on the merits bars a subsequent action between the same parties involving the same claim, demand, or cause of action. *101 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, ¶ 24. *Res judicata* applies to any matter offered to sustain or defeat the claim or demand, as well as any other matter that could have been offered for that purpose. *Andrews v. Gonzalez*, 2014 IL App (1st) 140342, ¶ 32. Here, the question of William's prior maintenance obligation was not at issue at the time of the August 2010 order, as William was seeking to modify future maintenance, so that order did not address any claims regarding past maintenance. Therefore, *res judicata* does not apply here.

¶ 95 William next maintains that the trial court found that disputed language in the July 2005 order, that he was to pay as base maintenance $3,300 per month plus "thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base," was ambiguous. William cites the trial court's statement in its March 2012 ruling that the July 2005 order "does not explain how to determine 'Ciex's incremental increase' or 'corresponding increase in [William's] base.' " William argues that if a contract is ambiguous, parol evidence may be admitted. William argues that his testimony that the order required 31% of his base salary and 31% of his bonus as maintenance was the only parol evidence on the issue, yet the court completely disregarded it.

¶ 96 The July 2005 order was an agreed order. Orders entered pursuant to agreements negotiated between parties are consent decrees. See *In re M.M.D.*, 213 Ill. 2d 105, 114 (2004). "Consent decrees entered by courts to effectuate settlement are *** considered contracts between

the parties to the litigation, and accordingly the law of contracts controls their interpretation." *Id.* Contract provisions are ambiguous only if they are subject to more than one reasonable interpretation. *Advocate Financial Group v. Poulos*, 2014 IL App (2d) 130670, ¶ 67. Here, the trial court did not find that the disputed language was ambiguous, as it did not find that there were two or more reasonable interpretations of the language. Rather, it found that the order's language did not further specify how to calculate "thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base." It essentially determined that the only reasonable interpretation of the language was that provided by Teresa, who maintained that the order as a whole provided that William's income was 84% of Ciex's income, with the remaining 16% representing reasonable business expenses.

¶ 97 William further argues that the trial court erred in construing the disputed phrase. In construing a contract, the primary objective is to give effect to the parties' intent, and we will first look to the contract's language to determine that intent. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). We construe a contract as a whole, viewing each provision in light of other provisions. *Id.* If the contract's words are clear and unambiguous, they will be given their plain, ordinary, and popular meaning. *Id.* We review a contract's interpretation *de novo*. *Carr v. Gateway, Inc.*, 241 Ill. 2d 15, 20 (2011).

¶ 98 William argues that the court erred in interpreting the "and" in "thirty-one percent (31%) of Ciex's incremental increase *and* corresponding increase in William's base" (emphasis added) as "or." William notes that "and" generally indicates the relation of addition (*People v. a Parcel of Property of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County Illinois*, 217 Ill. 2d 481, 500 (2005)) and is generally read in the conjunctive. William argues that the only reasonable construction of the phrase is that the word "corresponding" further limits

Ciex's "incremental increase" such that Ciex's incremental increase alone is not sufficient to trigger an increase in maintenance. William argues that the trial court's order completely disregards the dependent phrase and enters judgment based upon 84% of Ciex's income, disregarding that an increase in Ciex's income did not translate or correspond to an increase in his income. William maintains that the company could have had to pay subcontractors more or pay more taxes, which was the rationale for including a corresponding increase in his base income. William argues that the trial court's interpretation renders the phrase "corresponding increase in William's base" mere surplusage, contrary to contract construction rules.

¶ 99 William further argues that according to the calculations he submitted to the court, he actually overpaid Teresa by $12,379, as he continued to pay her $3,300 monthly even when his salary decreased. William argues that although Teresa maintained that William had manipulated his salary, the additional money would have to have resulted in higher shareholder distributions or retained earnings, which did not occur. William notes that the trial court's May 18, 2012, order stated that the July 2005 order required him to pay Teresa "31% of Ciex's incremental increase in income after reasonable business [*sic*]," and William argues that Teresa did not identify any improper expenses from his corporate tax returns. Citing *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 58 (2008), William argues that Ciex's business expenses as reported on its federal tax returns constituted *prima facie* evidence that the expenses were legitimate, but the trial court, at Teresa's urging, disallowed 16% as unreasonable, without any basis.

¶ 100 Teresa argues as follows. The July 2005 order was predicated upon the finding that William's current base salary was $10,500 a month, which was $126,000 annually. Ciex's income was stated to be $12,500 monthly, which was $150,000 annually. Accordingly,

William's salary was 84% of Ciex's income at the time of the July 2005 order. Therefore, she calculated that William's subsequent base income should be calculated at 84% of Ciex's gross receipts, and that he should owe her 31% of that base salary as maintenance. The trial court was not required to accept William's representations regarding his income from his tax return only. See *In re Marriage of McDonald*, 113 Ill. App. 3d 116, 118-19 (1983) (tax returns are admissible in marital litigation, but more is necessary for a spouse pleading inability to pay to establish this claim by a preponderance of the evidence). Although William argues that the trial court ignored that the July 2005 order required an increase in Ciex's income "and" an increase in his base income, the word "and" can sometimes mean "or." William also does not explain how the trial court took "and" to mean "or," and she and this court should not be left to guess. To the extent William argues that a raise in corporate income does not translate into more spendable money for him, there is no evidence of this in the record. William argues that Teresa did not present any evidence of improper corporate expenses, but she did not have to. William had this burden and relied solely on tax returns, which he should not have done under *McDonald*.

¶ 101 In response to William's argument that Ciex's business expenses as reported on federal tax returns constituted *prima facie* evidence that the expenses were legitimate, Teresa argues that William relies on cases defining income for child support purposes, under a statute not applicable here. Teresa argues that, even otherwise, in *In re Marriage of Rogers*, 213 Ill. 2d 129, 137 (2004), the court stated that a variety of payments qualify as income, and the Internal Revenue Code does not determine what constitutes income for child support purposes. Teresa cites a series of other child support cases involving business expenses and income determinations. See *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 818-19 (1992) (where father was self-employed, the trial court should have determined his income by beginning with his

gross income, not his claimed income under the federal tax code, and deduct reasonable and necessary expenses for producing income under section 505(a)(3)(h) of the Marriage Act); *In re Marriage of Lefler*, 185 Ill. App. 3d 677, 682 (1988) (trial court acted within its discretion in allowing 40% as overhead expenses for a self-owned business); *In re Marriage of Dawn*, 108 Ill. App. 3d 808, 813 (1982) (where husband had income of $150,000 from his medical practice and about $87,000 in business expenses, the trial court could look at the claimed expenses and conclude that husband had more spendable income than the $40,000 he claimed). Teresa argues that these cases show that the trial court here was not bound to rely on William's self-declared income from his tax returns, but rather had the discretion to find that his income was 84% of Ciex's income.

¶ 102 In looking at the question of whether there was a maintenance arrearage under the July 2005 order, we note that Teresa raised this issue in the context of a petition for rule to show cause. To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving, by a preponderance of the evidence, that the other party has violated a court order. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010). The burden next shifts to the alleged contemnor to prove that he did not willfully or contumaciously fail to comply with the court order, and that he has a valid excuse. *Id.* A trial court's determination that a party has engaged in indirect civil contempt will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984); *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 20.[11]

[11]In *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 n.3 (2008), this court noted that the supreme court has cautioned against using an abuse-of-discretion standard for factual findings. However, we stated that we would adhere to the standard set forth in *Longston* because

However, where the facts underlying a contempt finding are not in dispute, their legal effect may present a question of law, which we review *de novo*. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 10. This case also involves the trial court's determination of a party's annual income, which we review under the manifest-weight-of-the-evidence standard. *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 24.

¶ 103 The failure to comply with a maintenance order is *prima facie* evidence of contempt (*In re Marriage of Logston*, 103 Ill. 2d at 285), and Teresa alleged that William had failed to pay the maintenance required under the July 2005 agreed order. That order contained the following relevant findings. William was the 100% shareholder of Ciex. From its gross revenues, Ciex paid business expenses and employee benefits to William, prior to its payment of William's W-2 income. The dissolution judgment provided for William to pay Teresa $5,500 monthly predicated upon his $210,000 base salary, "which was Thirty-One Percent (31%) of William's gross annual base salary." Beginning in November 2004, Ciex received $12,500 for consulting services. "After Ciex pays business expenses and employee benefits similar to those paid at the time of the Judgment, but to a lesser extent, William receives a gross monthly salary of $10,500." The consulting agreement provided for a discretionary bonus from the client "and the possibility of an increase in base compensation."

¶ 104 The July 2005 order continued, in relevant part:

> "The Judgment provided for William to pay Teresa $5,500 monthly ($66,000 annually) predicated upon his $210,000 base salary, which was Thirty-One Percent (31%) of William's gross annual base salary. At William's current base salary of

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the supreme court had not specifically altered its standard of review for contempt petitions. *Id.*

> $10,500 per month ($126,000 annually), this 31% of William's present gross income is equivalent to $3,300 monthly ($39,600 annually).[12]
>
> **IT IS HEREBY ORDERED:**
>
> That commencing November 1, 2004 and until a termination event as provided in the Judgment or until further order of court, *William shall pay Teresa on the first of the month the amount of $3,300 per month as and for base maintenance; and thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in William's base*." (Emphasis added.).

The order further stated that William "shall pay Teresa as and for additional maintenance thirty one percent (31%) of any bonus(es) received by William, payable within seven (7) working days after his receipt ***." Also within that time frame, William was to provide Teresa's attorney with verification of date(s) and amount(s) of his "bonus and/or an increase in his base compensation."

¶ 105 As previously stated, we review the interpretation of a consent decree *de novo*. *Supra* ¶¶ 92-93. William emphasizes the phrase that he was required to "pay Teresa on the first of the month the amount of $3,300 per month as and for base maintenance; and thirty-one percent (31%) of Ciex's incremental increase and corresponding increase in [his] base." However, William focuses on the requirement regarding the increase in his base income to the exclusion of the fact that the phrase ties it to Ciex's increase in income. In other words, the phrase does not simply state that William must pay 31% of his base salary as maintenance but rather also references Ciex's income, with the parties presuming that an increase in Ciex's income would

[12] As stated, the dissolution judgment actually stated that William's annual base salary was $215,000 rather than $210,000. Further, 31% of $10,500 equals $3,255 rather than $3,300.

lead to a corresponding increase in William's base salary. Further, the findings in the consent decree emphasized the relationship between Ciex's income and William's salary, as the order stated that William was the 100% shareholder of the company; that Ciex paid business expenses and employee benefits before paying William's salary; that Ciex was receiving $12,500 per month from a client; and that after paying business expenses and employee benefits, it was paying William $10,500 per month.

¶ 106 Teresa essentially argued in support of her petition for rule to show cause that a greater base salary should be attributed to William because corporate tax returns showed a gross income far greater than the income reflected in the July 2005 order (which was $12,500 per month, or $150,000 per year). Ciex's tax returns showed gross revenues ranging from between $202,000 and $235,000 per year from 2005 to 2009. We conclude that this evidence was sufficient to constitute *prima facie* evidence that William had not complied with the July 2005 order, as a significant increase in Ciex's gross income should have caused an increase in William's salary, and thus increased the amount of maintenance due.

¶ 107 At this point, the burden shifted to William to show that he did not willfully or contumaciously fail to comply with the court order, and that he has a valid excuse. See *Cetera*, 404 Ill. App. 3d at 41 (2010). The trial court found that William failed to account for the fact that the revenues of his company, which he solely owned, had increased by over $50,000 annually without any corresponding increase in maintenance. The trial court stated that it could understand if William were arguing that it should adjust his income for additional reasonable and necessary business expenses, but he could not rely on just his corporate income tax forms. The trial court's approach is supported by caselaw. See *In re Marriage of McDonald*, 113 Ill. App. 3d at 118-19 (it is common knowledge that income may be sheltered from taxation by various

legal tax maneuvers, and a spouse may not rely solely on tax returns to show an inability to pay by a preponderance of the evidence).

¶ 108 The trial court ultimately vacated the contempt finding, stating that the July 2005 order's language could be confusing to a layperson. However, it still left in place its ruling regarding the maintenance arrearage. The trial court's imputation of an annual income to William of 84% of Ciex's income was not against the manifest weight of the evidence, as the July 2005 order effectively provided such a default computation for his base income, and William did not present sufficient evidence to counter this presumption.

¶ 109 William argues that although the trial court ultimately agreed that the July 2005 order could be confusing to a layperson and discharged its contempt finding, the money judgment against him can only be construed as punitive. We disagree, as the trial court awarded Teresa the additional maintenance it determined that William already should have paid her under the July 2005 order. Of course, the award also included interest, and we turn to that issue next.

¶ 110 William argues that the trial court erred by assessing compound interest rather than simple interest on the maintenance arrearage. William argues that the trial court imposed $39,739.51 compound interest on a $125,168.80 arrearage. It is clear from the record that Teresa calculated interest using compound interest rather than simple interest, and that the trial court adopted her calculations.

¶ 111 Teresa contends that William has forfeited the interest issue by not arguing it in the trial court below. See *People ex rel. T-Mobile USA, Inc. v. Village of Hawthorn Woods*, 2012 IL App (2d) 110192, ¶ 39 (a party who fails to raise an issue in the trial court forfeits it on appeal). We note that William pointed out the compound nature of the interest in his motion to modify, and he clearly sought to reverse the entire arrearage assessed under the July 2005 order, including

interest. Even if, *arguendo*, this would not be sufficient to preserve the issue for appellate review, we choose to address the argument, as forfeiture is a limitation on the parties rather than the reviewing court's jurisdiction (*id.*), and whether judgments should amass simple or compound interest is a question addressed by statutes.

¶ 112 The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, which is best indicated by the plain and ordinary meaning of the statute's language. *In re Marriage of Turk*, 2014 IL 116730, ¶ 15. Statutory construction presents a question of law, which we review *de novo*. *Id.* ¶ 14.

¶ 113 Section 504(b-5) of the Marriage Act (750 ILCS 5/504(b-5) (West 2012)) states:

> "Any maintenance obligation including any unallocated maintenance and child support obligation, or any portion of any support obligation, that becomes due and remains unpaid shall accrue *simple interest* as set forth in Section 505 of this Act." (Emphasis added.) *Id.*

¶ 114 Section 505 of the Marriage Act (750 ILCS 5/505 (West 2012)), to which section 504(b-5) refers, addresses child support. It states that child support arrearages "shall accrue *simple interest* as set forth in" (emphasis added) section 12-109 of the Code of Civil Procedure (Code). 750 ILCS 5/505 (West 2012). William likewise cites section 109 of the Code in his brief. Section 12-109(a) states that all judgments, except those arising by operation of law from child support orders, shall bear interest as provided in section 2-1303 of the Code (735 ILCS 5/2-1303 (West 2012)). 735 ILCS 5/12-109(a) (West 2012). Section 12-109(b) states that interest from judgments arising by operation of law from child support orders shall be calculated according to its provisions. 735 ILCS 5/12-109(b) (West 2012). In part, one-twelfth of the statutory interest rate in section 2-1303 is to be applied to the unpaid child support balance at the end of each

month. *Id.* Accrued interest is not included in the unpaid child support balance when calculating interest at the end of the month. *Id.* Section 2-1303, to which sections 12-109(a) and (b) refer, states that judgments shall draw interest at the rate of 9% per annum from the date of judgment until satisfied, with a 6% rate for units of local government. 735 ILCS 5/2-1303 (West 2012).

¶ 115 It is clear from looking at all of the above-mentioned statutes that maintenance awards should accrue 9% simple interest, rather than compound interest, as all of the statutes reference simple interest, and the calculations provided in section 12-109(b) do not compound the interest. The appellate court has directly held that interest on maintenance is calculated the same as interest on child support, with both calculated under the formula provided by section 12-109(b). *In re Marriage of Barile*, 385 Ill. App. 3d 752, 762-63 (2008). Therefore, the trial court erred by adopting Teresa's calculations based on compound interest rather than section 12-109(b).

¶ 116 Teresa does not contest that the arrearage should have accrued simple interest. She instead argues another basis for forfeiture, that William does not set forth what he believes the proper calculation should have been in his brief, thereby forfeiting the issue for review. We disagree that William forfeited the issue, as he cited section 12-109(b), which provides the proper formula for calculating the arrearage. As Teresa recognizes, this is a "complex calculation scheme" that takes into account the unpaid balance at the end of each month. We therefore remand the case for a hearing at which the formula in section 12-109(b) can be applied to the maintenance arrearage owed here.

¶ 117 III. CONCLUSION

¶ 118 For the reasons stated, we affirm the trial court's finding that William did not meet his burden of proving that Teresa was in a resident, continuing, conjugal relationship with Lee. We also affirm the trial court's finding that William failed to pay the maintenance required under the

July 2005 agreed order, but we vacate its imposition of compound interest on the total maintenance arrearage. We further remand the cause for the trial court to impose simple interest, rather than compound interest, on the arrearage owed.

¶ 119 Affirmed in part and vacated in part; cause remanded.