2016 IL App (2d) 141247-U
No. 2-14-1247
Order filed August 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF RICHARD WATSON, Petitioner-Appellant, and STEPHANIE WATSON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County. No. 11-D-903 Honorable Charles D. Johnson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in awarding respondent maintenance in its dissolution judgment: a prejudgment agreed order stating that maintenance would cease upon respondent's "co-habitating with someone" meant cohabitating in a *de facto* marriage, not merely dwelling with someone, and the trial court's finding that respondent was not in a *de facto* marriage was not against the manifest weight of the evidence, as the evidence described only, at most, a dating relationship.

¶ 2 Petitioner, Richard Watson, and respondent, Stephanie Watson, were married in 2003. In May 2011, petitioner filed a petition for dissolution of marriage. The trial court entered a judgment dissolving the parties' marriage in November 2012, but reserved the issue of maintenance. In November 2014, after conducting a hearing on the sole issue of maintenance,

the trial court awarded respondent $4,000 in monthly maintenance. Petitioner contends on appeal that respondent should be barred from receiving any maintenance because she cohabited with a third party during the pendency of the dissolution proceedings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record contains voluminous evidence concerning, among other things, respondent's mental health and the care she provided her children. The record also reflects that the trial court made several efforts to clarify the procedural posture of this case by amending prior orders *nunc pro tunc*. We recite here only the evidence and orders relevant to the issues raised.

¶ 5 On June 9, 2011, approximately one month after petitioner filed his petition for dissolution of marriage, the trial court ordered petitioner to pay respondent $6,000 per month in temporary maintenance. On June 21, 2011, the trial court entered an agreed order that amended the prior order *nunc pro tunc* to provide that "maintenance payments shall end on the first to occur of the death of [petitioner], the death of [respondent], the remarriage of [respondent], or [respondent] co-habitating with someone other than [petitioner]."

¶ 6 In September 2012, petitioner served respondent with a request to admit facts. Petitioner specifically asked whether, beginning in July 2011, respondent had lived with Don Simon for three months in the Lake Bluff house that she was renting. Petitioner also asked whether respondent had lived with Jeffrey Lindom in that same house since September 2011. Respondent did not respond to petitioner's request.

¶ 7 The matter proceeded to a two-day trial in November 2012 on the petition for dissolution. Respondent was not present either day. On the first day, the trial court indicated that respondent would be barred from receiving any future maintenance due to her failure to respond to petitioner's request to admit facts and the resulting inference that she had cohabited with a third

party. The trial court changed course the second day, announcing that it would reserve the issue of respondent's maintenance without prejudice to petitioner's right to raise the issue of respondent's alleged cohabitation. However, this oral ruling was not incorporated into the written judgment of dissolution, entered November 14, 2012.

¶ 8 On December 13, 2012, respondent filed a *pro se* motion to vacate the judgment dissolving the marriage. Respondent alleged that she was not given notice of the hearings and that she was further unable to defend herself due to mental disabilities which had led to her hospitalization. Respondent later obtained private counsel and filed an amended motion to vacate the judgment of dissolution. On November 18, 2013, following a hearing, the trial court entered an order granting respondent's motion as to the issue of maintenance only. On June 13, 2014, the trial court *sua sponte* entered an order amending the judgment of dissolution *nunc pro tunc* to reflect that the issue of respondent's maintenance was reserved. Within that same order, the trial court resolved the remaining outstanding issues in the case and concluded that the "cumulative effect of this order is that the matter is off call."

¶ 9 Respondent proceeded to file a petition to set maintenance, which went to a hearing over the course of several days in September and October 2014. The testimony revealed that respondent had rented a house close to the parties' marital home in Lake Bluff in July 2011. While respondent lived in this house, she had two female friends, two male friends, and a homeless man stay with her. Respondent testified that none of these people had any money, and she had her friends stay with her because she felt unsafe in the house. The homeless man stayed with her for a week before moving to a homeless shelter, and the two male friends were Simon and Lindom. Respondent clarified that, although she had people stay with her and she would

give some of these people money, no one ever lived in the house with her, and any amount of money she gave her friends was small.

¶ 10 With regard to Simon, respondent testified that he stayed with her "on and off" between August 5, 2011, and February 2, 2012. Simon lived with and cared for his diabetic sister, who lived in nearby Lake Forest, but he would stay with respondent in her home a few nights a week. Simon never stayed at respondent's home when she was not there, and when he stayed overnight, he and respondent slept in separate rooms. Simon would help respondent do yard work and clean the house. Respondent and Simon would watch movies together, go to the grocery store together, eat meals together, and entertain people at respondent's home. Because Simon was on disability, paying child support, and paying off bank loans, respondent paid for all of the meals they shared except one breakfast. Respondent's purchases included an outfit that Simon could wear to interviews, a computer, and internet service. Although respondent permitted Simon to use the computer for, among other things, matters related to obtaining a job, she had no knowledge of the e-mail "donaldstephanie@yahoo.com." Respondent maintained that Simon was never anything more than a friend. The friendship ended, according to respondent, after Simon crashed her car and he was charged with driving under the influence.

¶ 11 Concerning Lindom, respondent testified that he occasionally stayed with her when Simon broke into her home after she kicked him out in February 2012. Lindom paid rent on several other places, but never paid rent to respondent. Lindom performed some work on respondent's home, which the landlord did not authorize, and for which respondent paid him $3,270. Respondent and Lindom eventually began a dating relationship which lasted for approximately three months. During that time, Lindom stayed at respondent's home about three nights a week. Because Lindom had no car or valid driver's license, respondent would take him

grocery shopping "so he could cash in on his LINK card." In addition to using this public-aid money for his own groceries, Lindom would sometimes buy things to share with respondent. Petitioner testified that he had seen Lindom in respondent's car a few times, including once when respondent was going to visit the children. Respondent explained that Lindom's mother lived near the place where respondent had visitation with her children; while respondent was visiting her children, Lindom would go to his mother's townhome and help her pack for her move to a nursing home. It was also established that Lindom had identification listing respondent's home as his address. However, respondent's landlord testified that Lindom had previously rented the home in which respondent lived, and the evidence revealed that Lindom had not subsequently registered a new permanent address. Respondent admitted that Lindom may have stayed in her home alone while she was hospitalized for mental health issues.

¶ 12 In delivering its findings, the trial court first rejected petitioner's argument that the term "co-habitating" in the agreed order dated June 21, 2011, meant simply "living together with another person." Rather, the trial court accepted respondent's argument that the term meant "conjugal cohabitation," as set forth in section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(c) (West 2014)). The trial court next found that respondent had lived with various individuals for short periods of time. However, although there was evidence that respondent made joint purchases and "hung out" with some of the individuals, there was no evidence of any sexual relationships and little evidence of comingled finances. Thus, the trial court concluded, there was insufficient evidence of any *de facto* husband and wife relationships to bar respondent from receiving maintenance. Based on the evidence regarding the parties' respective financial circumstances, the trial court awarded respondent monthly maintenance of $4,000, to become reviewable after 36 months. Petitioner timely appeals.

¶ 13 II. ANALYSIS

¶ 14 On appeal, petitioner contends that respondent cohabited with a third party prior to the entry of the judgment of dissolution, and that she is therefore barred from receiving any maintenance. See *In re Marriage of Toole*, 273 Ill. App. 3d 607, 613 (1995) (holding that "maintenance should not be awarded where the party looking to receive maintenance is either cohabiting, or has cohabited, on a conjugal basis with another party since the inception of the marriage, absent a subsequent reconciliation"). Petitioner advances two arguments in support of his contention. First, he argues that the term "co-habitating" in the agreed order dated June 21, 2011, means simply "dwelling together," and that respondent unquestionably "dwelled" with others. Petitioner's second argument is that, even applying the statutory definition of "co-habitating" as it is set forth in section 510(c) of the Act, the evidence sufficiently established that respondent engaged in a *de facto* husband and wife relationship. We will consider these arguments in turn. However, we must first address the issue of our jurisdiction.

¶ 15 We have an independent duty to consider whether we have jurisdiction and to dismiss the appeal if jurisdiction is lacking. *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999 (2003). In the context of dissolution of marriage proceedings, absent a narrow list of exceptions, an order is not final and appealable if it resolves less than all of the claims brought by a party. *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶¶ 12-14; see also *In re Marriage of Harris*, 2015 IL App (2d) 140616, ¶ 16 (noting that a permanent child-custody order is a final and appealable order without regard to the pendency of remaining issues in a dissolution proceeding). Here, the trial court entered a written judgment of dissolution on November 14, 2012, which purported to resolve all of the claims brought by the parties. However, in its oral ruling that same day, the trial court reserved the issue of respondent's "right to receive maintenance." This

oral ruling was the trial court's true judgment. See *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009) ("When there is a conflict between the trial court's oral pronouncement and its written order, the oral pronouncement controls."). Regardless of the effect of the trial court's oral ruling, respondent filed a motion to vacate the judgment of dissolution within 30 days of its entry. See *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 206 (2010) (noting that a trial court loses jurisdiction over a matter if nothing is pending more than 30 days after the entry of a final judgment). The record reflects that the parties proceeded to file several pleadings during the course of the following two years. We need not discuss the substance of these pleadings, other than to note that each was resolved at some point prior to November 19, 2014, when the trial court entered the final order setting respondent's $4,000 monthly maintenance award. Petitioner then filed a timely notice of appeal, thereby conferring our jurisdiction in this case. See *In re Marriage of Gutman*, 232 Ill. 2d 145, 156 (2008).

¶ 16 Aside from our general appellate jurisdiction, respondent contends that we lack jurisdiction specifically over the trial court's ruling as to the applicable definition of "co-habitation." Respondent asserts that, in announcing its oral ruling on November 14, 2012, the trial court adopted the statutory definition from section 510(c), rather than the lesser standard now advanced by petitioner. Thus, respondent argues, petitioner should have taken steps to correct the written judgment to include its finding on the applicable definition of "co-habitation" and then timely appealed. According to respondent, petitioner's failure to act accordingly operated to deprive us of jurisdiction over the specific issue of the definition of "co-habitation" as it is applied in this case. We disagree for two reasons.

¶ 17 First, although the trial court referenced section 510(c) when it announced its oral ruling that the issue of maintenance was reserved, the record reflects that the applicable definition of "co-habitation" had not yet been contested. At that point, petitioner had filed a petition to terminate respondent's temporary maintenance in which he cited section 510(c) and argued that respondent had cohabited with a third party on a "continuing, conjugal basis." Only later, during the course of the proceedings on the sole issue of respondent's future maintenance, did respondent challenge the applicable definition of "co-habitation." Thus, the underlying premise of respondent's contention—that the trial court ruled on the applicable definition of "co-habitation" on November 14, 2012—is incorrect.

¶ 18 Second, as we touched on previously, an order is non-final, and thus non-appealable, where the order "demonstrates that the trial court has not yet made a final determination on an issue." *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 20. However, "where the trial court has determined the issue and merely intends to preserve its ability to enter a modification in the future if necessary, the order is final and appealable." *Id*. Here, the latter event did not occur. The trial court orally ruled that the issue of maintenance was reserved, but made no determination on any issue that was subject to its own future modification. For these reasons, we conclude that we have jurisdiction in this case, including the specific issue of the applicable definition of "co-habitation."

¶ 19 We turn now to the merits of petitioner's argument that the trial court erred in interpreting the term "co-habitation" as it is used in June 21, 2011, agreed order. We first note that an agreed order is not a judicial determination of the parties' rights; rather, it is a recitation of an agreement between the parties that is subject to the rules of contract interpretation. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. In construing an agreed order, our primary

objective is to give effect to the parties' intent. The plain and ordinary meaning of the language in the agreed order is the best indication of that intent. *Id*. When a term of an agreement is clear and unambiguous, the court must give the term its plain and obvious meaning. *In re Marriage of Hahn*, 324 Ill. App. 3d 44, 46 (2001). However a term that is susceptible to more than one reasonable meaning or interpretation is ambiguous, and in interpreting an ambiguous term, we must determine the meaning that establishes a rational and probable agreement. *Id.* at 47. The interpretation of an agreed order presents a question of law, which we review *de novo*. See *Hartz Construction Co. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 27.

¶ 20 The term at issue here is "co-habitation," as it was used in the June 21, 2011, agreed order. The trial court had previously ordered petitioner to pay respondent temporary monthly maintenance of $6,000. The agreed order stated in pertinent part that "all maintenance payments paid by [petitioner] and received by [respondent] * * * shall end on the first to occur of the death of [petitioner], the death of [respondent], the remarriage of [respondent], or [respondent] co-habitating with someone other than [petitioner]."

¶ 21 As discussed above, section 510(c) of the Act states the following regarding the termination of an obligation to pay future maintenance:

> "Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis." 750 ILCS 5/510(c) (West 2014).

Our supreme court has held that the legislature intended the term "cohabitation" in section 510(c) to have the general meaning of "living or dwelling together," and intended

"conjugal" to be interpreted as "of or belonging to marriage or the married state." *In re Marriage of Sappington*, 106 Ill. 2d 456, 464 (1985). Petitioner argues, however, that pursuant to the agreed order, he and respondent "otherwise agreed" to a definition of "co-habitation" which simply meant "dwelling together." We disagree.

¶ 22 Although the parties could have agreed on this lesser standard of "co-habitation," we believe the more rational interpretation of the agreed order is that the term was used as shorthand for residing with another on a resident, continuing conjugal basis. We find support for this conclusion in *Gallagher v. Lenart*, 226 Ill. 2d 208 (2007). The issue in that case was whether a party waived its right to assert a workers' compensation lien when it entered a settlement contract whereby it agreed to pay the other party $150,000 "in full and final settlement of all claims under the Workers' Compensation Act * * *." *Id*. at 234. Our supreme court acknowledged that a claim to enforce a workers' compensation lien qualifies as a "claim under the Workers' Compensation Act." *Id*. However, considering the integral role that the workers' compensation lien plays in the workers' compensation scheme, the court held that the contractual language was not sufficiently explicit to waive the lien. *Id*. at 237-38. The court observed that it was not uncommon to require an explicit waiver where an important statutory right is at issue. *Id*. at 239.

¶ 23 We believe the rationale from *Gallagher* is controlling here. The notion that spousal maintenance can be terminated on the basis of cohabitation is integral to our State's dissolution of marriage scheme. See, *e.g.*, Allan L. Karnes, *Terminating Maintenance Payments When an Ex-Spouse Cohabitates in Illinois: When Is Enough Enough?*, 41 J. Marshall L. Rev. 435, 435 (2008) ("Illinois is in the minority of states that statutorily terminate future support payments when the recipient spouse enters into another relationship short of marriage."). Prior to the entry

of the agreed order in this case, respondent had a right under the Act to have petitioner prove that she was residing with another person on a resident, continuing conjugal basis before she could be barred from receiving maintenance. See 750 ILCS 5/510(c) (West 2014); *Toole*, 273 Ill. App. 3d at 613. We believe that, for the same reasons articulated in *Gallagher*, explicit language was needed for respondent to waive this important statutory right. However, nothing in the agreed order indicates the parties' intent that respondent's maintenance would terminate upon petitioner's showing that she merely "dwelled" with another person.

¶ 24 We further note that, even if the agreed order included explicit language stating that the term "co-habitating" meant simply "dwelling together," there was no language indicating that the terms of the agreed order were intended to survive the dissolution of the parties' marriage. As a result, the order was no longer effective after the judgment dissolving the parties' marriage was entered. See 750 ILCS 5/501(a)(1), (d)(3) (West 2014) (providing that an order for temporary maintenance terminates when a final judgment dissolving the marriage is entered). Thus, even if we were to agree with petitioner's argument, the trial court was not bound in the judgment dissolving the marriage to provide that maintenance would terminate if respondent merely "dwelled" with another person.

¶ 25 We next address petitioner's argument that respondent should have been barred from receiving maintenance because the evidence was sufficient to establish that she cohabited with another person on a resident, continuing conjugal basis. We will reverse the trial court's ruling on this issue only if it is against the manifest weight of the evidence. *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 40. A ruling is against the manifest weight of the evidence if the opposite conclusion is clearly evident, or if the decision is unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 26 "To prove the existence of a resident, continuing, conjugal relationship, one ex-spouse must show that the other is involved in a *de facto* husband and wife relationship with a third party." *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 188-89 (2004). The following non-exhaustive list of factors is considered in determining whether the ex-spouse and third party have engaged in a *de facto* husband and wife relationship: (1) the length of the relationship; (2) the amount of time spent together; (3) the nature of activities engaged in; (4) the interrelation of personal affairs, including finances; (5) whether they vacation together; and (6) whether they spend holidays together. *Miller*, 2015 IL App (2d) 140530, ¶ 40. Courts should also consider the totality of the circumstances and the level of commitment between the ex-spouse and third party. *Id.* ¶ 68.

¶ 27 The evidence in this case revealed that Simon, who was unemployed, occasionally stayed with respondent during a six-month period. This was not because respondent and Simon were engaged in an intimate relationship, but because respondent was concerned for her own safety. When Simon stayed at respondent's home, he slept in a separate room. He never had keys to respondent's home, and he never stayed at the house when respondent was not there. Although respondent and Simon did things together such as complete household chores, entertain friends, grocery shop, and watch movies, this is evidence of nothing more than a close friendship. Respondent also bought Simon clothes to wear to job interviews and she may have shared an e-mail account with him, but considering the totality of the circumstances, we agree with the trial court that this did not rise to the level of a *de facto* marriage.

¶ 28 Unlike with Simon, respondent and Lindom actually entered a dating relationship. We acknowledge that this relationship included a certain level of intimacy. However, we do not believe that respondent and Lindom were involved in a resident, continuing conjugal

relationship. See *In re Marriage of Bates*, 212 Ill. 2d 489, 524 (2004) (affirming the trial court's determination that the parties' intimate, dating relationship was not akin to marriage). During the approximately three months that respondent and Lindom were dating, Lindom would stay with respondent three nights per week. Lindom had no car and no valid driver's license, and similar to the other people who stayed with respondent, the evidence established that Lindom had little money on which to live. Respondent and Lindom would grocery shop together and Lindom would occasionally use his public-aid money to buy things for the two of them to cook. At times, Lindom had keys to respondent's house. Lindom performed maintenance work on respondent's house, for which respondent paid him. Although Lindom's identification card listed the address for the house that respondent rented, this was because Lindom had lived in that very house before it was rented by respondent. Just as with Simon, we do not believe the totality of the circumstances warrant a conclusion that respondent and Lindom were engaged in a *de facto* marriage. We therefore hold that the trial court's finding on this issue was not against the manifest weight of the evidence.

¶ 29 In addition to the arguments addressed thus far, petitioner briefly argues that the trial court erred in calculating respondent's $4,000 monthly maintenance award. Without citing any legal authority, petitioner claims only that respondent received a larger share of the marital assets due to the money that petitioner paid to respondent during the pendency of the litigation. Lack of citation to legal authority in briefs before this court results in waiver for failure to comply with Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011). Moreover, a trial court's ruling on the amount of a maintenance award will not be disturbed absent an abuse of discretion, which exists only where no reasonable person would take the view adopted by the court. *In re Marriage of Micheli*, 2014 IL App (2d) 121245,

¶ 20. The party seeking reversal of a maintenance award bears the burden of showing that the trial court abused its discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). Hence, even if we did not conclude that petitioner has waived this argument, we do not believe that petitioner has shown that the trial court abused its discretion in calculating respondent's maintenance award.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the ruling of the circuit court of Lake County.

¶ 32 Affirmed.