

NOTICE
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2016 IL App (4th) 150271-U
NO. 4-15-0271
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
April 25, 2016
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
KRAIG D. OSBORNE,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 09D466
TONYA M. OSBORNE,)	
Respondent-Appellant.)	Honorable
)	Eric S. Pistorius,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate affirmed the trial court's decision to terminate maintenance after the trial court found that the maintenance recipient was cohabiting with another person.

¶ 2 In April 1986, petitioner, Kraig D. Osborne, and respondent, Tonya M. Osborne, were married. In June 2009, Kraig petitioned for dissolution of marriage. In April 2011, the trial court dissolved the marriage and ordered Kraig to pay Tonya permanent maintenance. In July 2013, Kraig filed a petition to terminate maintenance, claiming that Tonya was cohabiting with a man named Dennis Wayne Schneider. In March 2015, the trial court terminated maintenance, finding that Tonya and Schneider were cohabiting.

¶ 3 Tonya appeals. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in April 1986. During the marriage, Kraig was self-

employed as a dentist, and Tonya worked as a bookkeeper. The marriage produced two children: Kraig Osborne, Jr. (born September 23, 1986), and Kailey Osborne (born September 19, 1991). In June 2009, Kraig petitioned for dissolution of marriage.

¶ 6 In April 2011, the trial court entered a judgment of dissolution of marriage. At the time of dissolution, Kraig was 50 years of age, and Tonya was 45. As part of its judgment, the court ordered Kraig to pay Tonya permanent maintenance. The initial maintenance payment was \$5,000 per month, which would gradually increase to \$7,000 per month by January 2014.

¶ 7 In July 2013, Kraig filed a petition to terminate maintenance, in which he claimed that Tonya had been cohabiting with her business partner, Schneider, since August 2011. As a result, Kraig argued, maintenance should be terminated pursuant to section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act). 750 ILCS 5/510(c) (West 2012) ("[T]he obligation to pay future maintenance is terminated *** if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis.")). In addition, Kraig argued that Tonya should repay \$123,000 in maintenance payments made after she began cohabiting with Schneider.

¶ 8 A. Evidence Presented on Kraig's Petition
To Terminate Maintenance

¶ 9 The following evidence was presented at two hearings in October 2014 and December 2014.

¶ 10 1. *Tonya's Testimony*

¶ 11 Tonya presented the following testimony at the December 2014 hearing.

¶ 12 a. *Tonya's Residence*

¶ 13 Tonya testified that since January 2011, she had lived continuously at a home located on Steinkoenig School Road in Highland, Illinois (Highland residence).

¶ 14

b. Anchors Away

¶ 15 Tonya testified that since 2011 she had run a business called Anchors Away, which was involved in buying and selling residential real estate. Tonya testified further that she and Schneider were equal partners in the business. They operated Anchors Away out of an office in the upstairs portion of Tonya's Highland residence.

¶ 16

c. Tonya's Relationship With Schneider

¶ 17 Tonya testified that she met Schneider in 2010 and began a sexual relationship with him sometime in 2011 or early 2012 that lasted until at least September 2014. Tonya testified further that during her relationship with Schneider, he sometimes spent the night at her home and slept in her bed. The mornings after he slept over, Schneider would sometimes use Tonya's bathroom to shower. Tonya testified that Schneider stored clothes at her home but that they were work clothes that Schneider stored in the Anchors Away office.

¶ 18

Tonya testified that Schneider sometimes mowed the grass at her Highland residence as part of his duties for Anchors Away and not as a personal favor to Tonya. Tonya testified further that she left the house unlocked for Schneider and allowed him to come and go as he pleased, but only for business-related reasons. According to Tonya, because the Anchors Away business office was located in her home, Schneider needed access to her home to fulfill his work-related responsibilities. Tonya testified that Schneider installed shelving and a bathroom in an outbuilding on Tonya's property that was used for Anchors Away business. Although Tonya bought a truck from Schneider for \$500, Schneider continued to use the truck to conduct Anchors Away business.

¶ 19

Tonya averred that her sexual relationship with Schneider was not exclusive. She testified that since August 2011, she had "dated lots of guys." In support of that contention, To-

nya presented the testimony of two witnesses, which we briefly describe here.

¶ 20 Kyle Bates testified that he dated Tonya from spring 2011 until summer 2013. Bates stated that he and Tonya went on between two and five dates per month. Both Bates and Tonya were dating other people while dating each other. According to Bates, within a month of dating, they began having sex. Over the course of their relationship, either Bates or Tonya spent the night at the other's home approximately 18 or 20 times.

¶ 21 Darrell Dennis Shearrer testified that he began a dating relationship with Tonya in May 2012. Shearrer travelled a lot and would "get together" with Tonya when he was in town, approximately twice a month. Their relationship turned into a "physical relationship" in May or June 2012. Shearrer testified further that his dating relationship with Tonya was ongoing at the time of his testimony. Shearrer stated that he had never been to Tonya's home. Instead, Tonya came to his home or they went to a hotel.

¶ 22 d. Comingling Funds

¶ 23 Tonya testified that she purchased two life insurance policies for her and Schneider. Tonya described the policies as investment tools that would benefit Anchors Away. Schneider testified that one of the life insurance policies was taken out on his life for \$10,565, payable to Tonya.

¶ 24 2. *Schneider's Bankruptcy Filings*

¶ 25 Kraig offered—and the trial court admitted into evidence—several filings made in Schneider's 2013 bankruptcy proceedings. In May 2013, Schneider filed a petition in bankruptcy court and, in July 2013, an amended petition. The amended petition listed Tonya as a creditor, described her as Schneider's girlfriend, and stated that she lived at the Highland residence. The petition stated further that Schneider resided at Tonya's Highland residence from August 2011

through April 2013. The amended petition stated further that Schneider owed Tonya \$6,300 for an unspecified debt. The petition did not list any ownership interest for Schneider in Anchors Away.

¶ 26 Also in July 2013, Schneider filed an affidavit in bankruptcy court confirming that Tonya was his "girlfriend" and that she resided at the Highland residence continuously from February 2011 through the filing of Schneider's affidavit. The affidavit stated further that Schneider "lived with Tonya" at the Highland address from August 2011 until April 2013.

¶ 27 *3. Schneider's Testimony*

¶ 28 a. Schneider's Residence

¶ 29 At the October 2014 hearing, Schneider testified that he lived in an apartment in Belleville from August 2011 through April 2013. Schneider stated that he used Tonya's Highland address as his mailing address during that time because the mail service in Belleville was unreliable. In addition, Schneider was "partially an alcoholic" at the time and struggled to keep up with his mail. He had his mail sent to the Highland address so that Tonya could keep track of it because she was more responsible and was helping him with his taxes. Schneider testified further that his bankruptcy attorney advised him to use the Highland address in his bankruptcy filings because that was where Schneider received his mail.

¶ 30 Schneider testified further that he never resided at the Highland residence. He stated that he sometimes spent the night there when he was working late or when he could not find a ride back to his home in Belleville. Schneider testified that he did not have a valid driver's license during that time, which made it difficult for him to travel to his Belleville home. Schneider testified further that he did not spend the night at Tonya's on a regular basis. Schneider admitted that, when meeting with a bankruptcy trustee during his bankruptcy proceedings, he told

the trustee that he had lived with Tonya for several years.

¶ 31 b. Nature of Schneider's Relationship With Tonya

¶ 32 Schneider testified that since June 2011, he had dated Tonya and engaged in a sexual relationship with her. He described the relationship as "sporadic dating." He stated that he also dated other women while dating Tonya. Schneider testified that at the time of trial he continued to have a sexual relationship with Tonya.

¶ 33 Schneider testified further that he and Tonya took a cruise together with Tonya's daughter as part of the Make-a-Wish program. On the cruise, Schneider and Tonya shared a room. Schneider also travelled with Tonya to her son's home in South Carolina. Schneider testified that he went on the trip so that he could work on her son's house. Schneider stated that he and Tonya sometimes went out to dinner but only when they were working together.

¶ 34 c. Comingling of Funds

¶ 35 Schneider testified that he told the bankruptcy trustee that Tonya had loaned him \$13,000 in attorney fees during his divorce, of which he had paid her back about half. Schneider also told the trustee that, while he lived with Tonya, he contributed to her household expenses but Tonya did not contribute to his. Schneider testified that, in 2012, he used \$12,000 from a life insurance policy to purchase a home on Hallwood Drive in St. Louis

¶ 36 Schneider testified further that, in April 2013, he moved from his Belleville apartment to the house on Hallwood Drive in St. Louis. Schneider stated that he purchased the St. Louis property in his name but that it was intended to be an investment for Anchors Away. According to Schneider, he needed to reside in the property for one year in order for Anchors Away to purchase it as an "owner-occupied" property. Schneider testified that he and Tonya used their personal funds to support the renovation of the St. Louis property because Anchors

Away did not have sufficient funds to support the renovations. Schneider testified that no record was kept of how much personal money he and Tonya had invested in Anchors Away.

¶ 37 Schneider testified that, in 2012, Anchors Away purchased a residential property, referred to as the "Dartmoor" property. Schneider "gutted" the property and renovated it with Tonya's help. They began renting the property to tenants in April 2014.

¶ 38 Schneider testified further that Tonya loaned him \$13,000 to pay for attorney fees in his divorce. In addition, Tonya once paid Schneider's \$204 in union dues, which Schneider paid back within a week. Schneider testified that he sometimes paid for Tonya's utilities and loaned her money. Schneider stated that he sometimes paid the water bill at Tonya's address because Tonya paid all the other bills associated with the office. Schneider stated that, as business partners, he and Tonya often went to each other when they needed money. Schneider considered all the money he and Tonya exchanged to be short-term, no-interest loans. Tonya made the first monthly payment after Schneider's bankruptcy judgment. Schneider testified that he and Tonya never shared a bank account.

¶ 39 A spreadsheet created by Tonya showed that Schneider made the following payments toward the utility bills at her Highland residence. Schneider made payments to the water company to cover the water bill in February 2012, April 2012, May 2012, June 2012, July 2012, August 2012, November 2012, and December 2012. A section of the spreadsheet entitled "Utilities-Other" showed that in 2012, in addition to the water payments, Schneider made 18 payments to Tonya for a total of \$7,265.94. Schneider testified that those payments went toward utilities for the Highland residence.

¶ 40 *4. Other Evidence*

¶ 41 Schneider's bankruptcy attorney, John Johnson, testified that the information con-

tained in Schneider's bankruptcy filings was provided by Schneider. Johnson denied advising Schneider to be untruthful in his assertions in the filings. Johnson testified that Schneider stated that he lived with Tonya from August 2011 through April 2013.

¶ 42 Kraig offered Schneider's bank records showing that in July 2011, Schneider changed his listed address to the Highland residence and, in June 2013, changed his address to the St. Louis residence. Kraig offered additional evidence that Schneider used the Highland address (1) during his dissolution proceedings from his former wife; (2) as the address he gave employers; (3) on his unemployment paperwork; (4) on the deed when he purchased the St. Louis property; and (5) on his tax returns.

¶ 43 B. The Trial Court's Decision

¶ 44 In March 2015, the trial court entered a four-page written order terminating maintenance, finding that Tonya was cohabiting with Schneider.

¶ 45 The trial court noted the following evidence establishing cohabitation: (1) Tonya and Schneider shared a residence; (2) they comingled funds; (3) they admitted a long-standing sexual relationship; (4) they spent several holidays together; (5) they exchanged gifts; and (6) they went on a cruise together with Tonya's daughter.

¶ 46 The trial court detailed the evidence presented establishing that Tonya and Schneider shared the Highland residence. This evidence included Schneider's using the Highland address in his bankruptcy filings and tax returns. In addition, the trial court noted that Schneider filed an affidavit in his bankruptcy proceedings confirming that he resided with Tonya.

¶ 47 In support of its finding that Tonya and Schneider comingled funds, the trial court noted the following evidence: (1) Schneider contributed to Tonya's household expenses; (2) To-

nya loaned Schneider money; (3) Tonya paid for Schneider's union dues, attorney fees, bond, bankruptcy plan, and repairs to the St. Louis property; (4) Tonya purchased life insurance policies for herself and Schneider; (5) Schneider did yard work at Tonya's residence and made improvements to her property, both without pay. The court found unpersuasive Tonya's argument that much of her and Schneider's comingling of funds was due to their shared business.

¶ 48 The trial court found unavailing Tonya's argument that the nonexclusive nature of her relationship with Schneider prevented a finding of cohabitation. The court's order explained, as follows:

"In response to the suggestion that [Tonya] had cohabited with Mr. Schneider, [Tonya] testified, and put on two witnesses in support, that she also had sexual relations with several other men over the last four years. [Tonya] seemed to be arguing, that since she was involved in sexual relations with other men while she was involved with [Schneider], that that somehow negated the *de facto* husband and wife relationship. The court has a difficult time trying to understand how, simply because respondent fooled around a []lot, that that somehow negated her *de facto* marriage. I guess that the only way that the court can respond to this is to ask '[D]oes the fact that one or the other of the spouses in a traditional marriage cheats on the other, does that, in and of itself, negate the marriage?' The answer to that is of course, no."

¶ 49 In conclusion, the trial court found that Tonya had cohabited with Schneider since August 2011. As a result, the court terminated maintenance, effective July 9, 2013—the date

that Kraig filed his petition to terminate maintenance. In addition, the court ordered Kraig to pay \$10,000 in attorney fees to Tonya.

¶ 50 This appeal followed.

¶ 51 II. ANALYSIS

¶ 52 Tonya argues that the trial court's finding that she cohabited with Schneider was against the manifest weight of the evidence. We disagree.

¶ 53 A. Applicable Law and Standard of Review

¶ 54 Section 510(c) of the Dissolution Act provides that "the obligation to pay future maintenance is terminated *** if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis." 750 ILCS 5/510(c) (West 2012).

¶ 55 To establish the cohabitation described by section 510(c), the party seeking termination has the burden to make a substantial showing that the other party is involved in a *de facto* husband-and-wife relationship with a third party. *In re Marriage of Thornton*, 373 Ill. App. 3d 200, 208, 867 N.E.2d 102, 109 (2007). "Each case seeking termination of maintenance based on a recipient's conjugal cohabitation rests on its own facts, given the unique nature of each interpersonal relationship." *In re Marriage of Bates*, 212 Ill. 2d 489, 524, 819 N.E.2d 714, 733 (2004). The following nonexhaustive list of factors is relevant to determining whether a *de facto* husband-and-wife relationship exists: (1) the length of the relationship; (2) the amount of time the couple spends together; (3) the nature of activities engaged in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together. *Thornton*, 373 Ill. App. 3d at 209, 867 N.E.2d at 109-10; *cf. In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶¶ 46-50, 40 N.E.3d 206 (noting the limitations and the nonexhaustive nature of the six-factor test).

¶ 56 A *de facto* marriage requires more than merely an "intimate dating relationship." *Id.* ¶ 51. It requires "signs of mutual commitment and permanence." *Id.* ¶ 50. In reaching a determination about whether a *de facto* marriage exists, "courts should consider whether and to what degree the new couple exercises a partnership approach to the acquisition, use, and preservation of material resources and income." *Id.* ¶ 55. Likewise, courts should consider " 'whether the [spouse receiving maintenance] has formed a new relationship wherein the partners *look* to each other for support.' " (Emphasis in original.) *Id.* (quoting *In re Marriage of Weisbruch*, 304 Ill. App. 3d 99, 106, 710 N.E.2d 439, 444 (1999)).

¶ 57 If the party seeking termination of maintenance makes a substantial showing that a *de facto* husband-and-wife relationship exists, the burden of proof shifts to the nonmoving party to establish that "the relationship in which he or she is engaged is not the type of relationship which was intended by the legislature to justify the termination of the obligation to pay maintenance." *In re Marriage of Lambdin*, 245 Ill. App. 3d 797, 801, 613 N.E.2d 1381, 1386 (1993).

¶ 58 We will not reverse a trial court's finding about a *de facto* husband-and-wife relationship unless that finding is against the manifest weight of the evidence. *In re Marriage of Snow*, 322 Ill. App. 3d 953, 956, 750 N.E.2d 1268, 1270 (2001). A decision 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. *Miller*, 2015 IL App (2d) 140530, ¶ 40, 40 N.E.3d 206.

¶ 59 B. The Trial Court's Decision

¶ 60 In this case, the trial court entered a detailed order finding that Tonya had cohabited with Schneider. In reaching its decision, the court noted the following characteristics of Tonya and Schneider's relationship: they (1) shared a residence from August 2011 until at least

April 2013; (2) comingled funds; (3) engaged in a long-standing sexual relationship; (4) spent several holidays together; (5) exchanged gifts; and (6) went on a cruise together.

¶ 61 We agree with the trial court that the evidence established that Tonya and Schneider enjoyed a *de facto* husband-and-wife relationship. In reaching that conclusion, we rely heavily upon the trial court's findings that Tonya and Schneider (1) shared a residence, (2) comingled funds, and (3) engaged in a long-standing sexual relationship

¶ 62 C. Evidence That Tonya and Schneider Shared a Residence

¶ 63 Kraig provided extensive evidence that Tonya and Schneider lived together at the Highland residence. Tonya testified, and does not now contest, that she has lived continuously at the Highland residence since January 2011. Schneider's May 2013 filing in bankruptcy court stated that he resided at Tonya's Highland residence from August 2011 through April 2013. At a subsequent creditor's meeting, Schneider again stated that he lived at the Highland address from August 2011 through April 2013. Further, in his July 2013 affidavit in bankruptcy court, Schneider confirmed that he "lived with Tonya" at the Highland address from August 2011 until April 2013. Based on the aforementioned evidence, the trial court's finding that Schneider resided with Tonya was not against the manifest weight of the evidence.

¶ 64 D. Evidence That Tonya and Schneider Comingled Funds

¶ 65 Schneider testified that while he was living in the Highland residence, he made significant monetary contributions to pay for utilities. He testified further that he and Tonya loaned each other money on a frequent basis, with no expectation of interest and no timeline for repayment. Schneider sold a truck to Tonya, which Tonya then let Schneider use. Furthermore, Tonya and Schneider testified that Tonya took out a life insurance policy on Schneider, with Tonya named as the beneficiary. Tonya testified that she used the Anchors Away account funds for

personal reasons.

¶ 66 In this case, the evidence established that Tonya and Schneider utilized a "partnership approach to the acquisition, use, and preservation of material resources and income." *Id.*

¶ 55. Tonya and Schneider "look[ed] to each other for support.'" (Emphasis omitted.) *Id.* (quoting *Weisbruch*, 304 Ill. App. 3d at 106, 710 N.E.2d at 444). They consistently made loans to each other with no expectation that interest would be paid and no firm requirements for when the money should be paid back. That kind of back-and-forth exchange of money is characteristic of a husband-and-wife relationship instead of a sporadic dating relationship. Although Tonya and Schneider did not share a bank account, they lent each other money so frequently it was as if their separate finances were actually mutual.

¶ 67 E. Tonya's Argument That Her Relationship With
Schneider Was Business-Related

¶ 68 In spite of the extensive evidence establishing that Tonya and Schneider lived together and comingled funds, Tonya argues that those aspects of their relationship were the result of Tonya and Schneider's relationship as business partners. We disagree.

¶ 69 The trial court was in the best position to judge the credibility of witnesses. The court heard Tonya's testimony that Schneider spent so much time at Tonya's residence only because he was performing Anchors Away business. The court rejected Tonya's characterization of the evidence. We defer to the trial court's credibility findings. In addition, we conclude that the court's findings were supported by the evidence presented.

¶ 70 F. Tonya and Schneider's Long-Standing Sexual Relationship

¶ 71 The evidence established that Tonya and Schneider shared a long-standing sexual relationship. Tonya does not contest that finding. She and Schneider both testified that they had an ongoing sexual relationship from 2011 or early 2012 through 2014.

