

NOTICE

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2016 IL App (4th) 150476-U

NO. 4-15-0476

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 22, 2016

Carla Bender

4th District Appellate Court, IL

In re: MARRIAGE OF)	Appeal from
DEBRA L. FLESNER,)	Circuit Court of
Petitioner-Appellee and)	Champaign County
Cross-Appellant,)	No. 03D632
and)	
JEFFREY P. FLESNER,)	Honorable
Respondent-Appellant and)	Arnold F. Blockman,
Cross-Appellee.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment (1) modifying maintenance from \$750 to \$1,100 per month, (2) granting petitioner's request for interim attorney fees, (3) denying both parties' motions for a final contribution of attorney fees, and (4) denying petitioner's request for interim appellate attorney fees.

¶ 2 Petitioner, Debra Flesner, and respondent, Jeffrey Flesner, were married in June 1976. In November 2004, the trial court entered an order of dissolution, which ordered that Jeffrey pay Debra \$750 in maintenance per month. In March 2014, Jeffrey filed a motion to terminate maintenance. In April 2014, Debra filed a motion to modify maintenance, arguing that maintenance should be increased. That same month, Debra filed a petition for interim attorney fees. In July 2014, the court awarded Debra \$6,000 in interim attorney fees. Both Debra and Jeffrey later filed motions for a final contribution of attorney fees.

¶ 3 In August 2014, October 2014, and January 2015, the trial court held hearings on the parties' motions regarding maintenance. In May 2015, the court entered a written order, in-

creasing maintenance to \$1,100 per month. The court found further that the prior award of \$6,000 in interim attorney fees to Debra was a sufficient final contribution of attorney fees. Jeffrey appealed. Debra filed a motion for interim appellate attorney fees, which the court denied. Debra then cross-appealed.

¶ 4 On appeal, Jeffrey argues that the trial court abused its discretion by (1) refusing to terminate maintenance and instead increasing maintenance to \$1,100 per month, (2) granting Debra's motion for interim attorney fees, and (3) denying his motion for a final contribution of attorney fees. Debra argues that the court erred by (1) refusing to apply the recently amended maintenance statutes and (2) denying her motions for trial and appellate attorney fees. We disagree with all of these arguments and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Order of Dissolution

¶ 7 In November 2004, after a 27-year marriage that produced three children, the trial court entered a judgment of dissolution of marriage. The judgment included an award of permanent maintenance to Debra of \$750 per month.

¶ 8 B. The Filings at Issue in This Case

¶ 9 In March 2014, Jeffrey filed a motion to terminate maintenance, arguing the following changes in circumstances: (1) Jeffrey's income was reduced after being laid off in January 2014; (2) Debra had failed to make reasonable efforts to become self-supporting; and (3) Debra was cohabitating with Steve Wilson.

¶ 10 In April 2014, Debra filed a petition to modify maintenance, arguing that the following changes in circumstances justified an increase in maintenance: (1) Jeffrey's ability to contribute maintenance had increased since the time of the original maintenance award; (2) Debra's

financial circumstances had worsened over that same time period; and (3) Debra's needs and cost of living had increased.

¶ 11 Later that month, Debra filed a petition for interim attorney fees and costs, arguing that interim fees and costs were necessary for her to participate in the litigation. After a July 2014 hearing, the trial court granted, in part, Debra's petition for interim attorney fees, ordering Jeffrey to pay Debra \$6,000 in interim fees.

¶ 12 In August 2014, the trial court held a hearing and heard evidence on the parties' motions regarding maintenance. At subsequent hearings in October 2014 and January 2015, the parties presented additional evidence on the issue of maintenance.

¶ 13 Meanwhile, in October 2014, Debra and Jeffrey both filed petitions for a final contribution of attorney fees. Jeffrey argued that Debra had access to hundreds of thousands of dollars in retirement savings that she could use to pay her attorney.

¶ 14 C. The Trial Court's Order Resolving the Parties' Filings

¶ 15 On May 6, 2015, the trial court entered an order resolving the parties' filings as to maintenance and attorney fees. The court made lengthy, written factual findings, which we address in general here and with detail later, when relevant to our analysis. We also wish to thank and commend the trial court for its careful consideration of the parties' arguments, which we found most helpful in resolving this case.

¶ 16 1. *Maintenance*

¶ 17 The trial court denied Jeffrey's motion to terminate maintenance, finding that Debra (1) was not cohabitating with Wilson and (2) did not fail to make reasonable efforts to become self-supporting. The court granted, in part, Debra's motion to modify maintenance, increasing maintenance from \$750 per month to \$1,100 per month.

¶ 18

2. Attorney Fees

¶ 19 The trial court found that Debra had incurred \$25,024 in attorney fees and Jeffrey had incurred \$20,778. The court found further that a large difference existed between the financial circumstances of Jeffrey and Debra that would normally warrant a significant award of attorney fees to Debra. The court noted, however, that any award to Debra should be reduced because Debra's relationship with Wilson established a *prima facie* case that Debra had cohabitated with Wilson. As a result, the court found that Jeffrey was warranted in bringing his petition to terminate maintenance, which it considered a factor in determining Debra's award of attorney fees. The court concluded that the interim attorney fees award of \$6,000 was a sufficient award of attorney fees.

¶ 20 D. Proceedings Subsequent to the Trial Court's May 2015 Order

¶ 21 The following dates are relevant to our subsequent evaluation of our jurisdiction to hear Debra's cross-appeal. On June 3, 2015, Jeffrey filed a motion to reconsider, and Debra filed a response. On June 11, 2015, the trial court denied Jeffrey's motion to reconsider. That same day, Jeffrey filed a notice of appeal. On June 16, 2015, Debra filed in the trial court a motion for interim appellate attorney fees pursuant to section 508(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(a)(3) (West 2014)). At a July 2, 2015, hearing, the trial court denied Debra's motion for interim appellate attorney fees. On July 6, 2015, Debra filed a notice of cross-appeal.

¶ 22

II. ANALYSIS

¶ 23 Jeffrey argues that the trial court abused its discretion by (1) refusing to terminate maintenance and instead increasing maintenance to \$1,100 per month, (2) granting Debra's motion for interim attorney fees, and (3) denying his motion for attorney fees. Debra argues that the

court erred by (1) refusing to apply the recently amended maintenance statutes and (2) denying her motions for trial and appellate attorney fees.

¶ 24 A. Decision To Terminate Maintenance

¶ 25 Jeffrey argues that the trial court abused its discretion by refusing to terminate maintenance and instead increasing maintenance to \$1,100 per month. In support of that claim, Jeffrey argues that the court erred by failing to terminate maintenance despite (1) Debra's cohabitating with Wilson and (2) changes in circumstances that demanded a termination of attorney fees. We address and reject Jeffrey's contentions, in turn. Prior to addressing Jeffrey's claims, we first consider Debra's argument about the applicable version of the Dissolution Act.

¶ 26 1. *Debra's Argument That the Trial Court Should Have Applied the Recently Amended Section 504 of the Dissolution Act*

¶ 27 Effective January 1, 2015, Public Act 98-961, amended, in pertinent part, section 504 of the Dissolution Act. Public Act 98-961, § 5 (eff. Jan. 1, 2015). Public Act 98-961 added "guidelines," allowing trial courts to calculate the amount of maintenance according to a mathematical formula, similar to the way child-support payments are determined. See 750 ILCS 5/504(b-1) (West 2014) (providing the new guidelines). Public Act 98-961 did not amend the list of relevant factors for determining whether a maintenance award is appropriate under section 504(a). 750 ILCS 5/504(a) (West 2014). Debra argues that the trial court should have applied the newly amended version of section 504 when determining whether to modify maintenance.

¶ 28 Despite Debra's claim, the amendments created by Public Act 98-961 have no effect on this case, which involved motions to modify maintenance. Modifications of maintenance are governed by section 510 of the Dissolution Act (750 ILCS 5/510 (West 2014)). Section 510(a-5) provides that, when determining whether to modify maintenance, a court should consider certain factors, along with the factors set forth in section 504(a) of the Dissolution Act (750

ILCS 5/504(a) (West 2014)). 750 ILCS 5/510(a-5) (West 2014). Section 510 contains no reference to any other part of section 504, and Public Act 98-961 did not amend section 510 to require that trial courts consider the new guidelines when deciding petitions to modify maintenance. As a result, section 510(a-5) does not require trial courts to consider the new guidelines when deciding petitions to modify maintenance.

¶ 29

2. Maintenance in General

¶ 30

Section 504(a) of the Dissolution Act provides that in a proceeding for dissolution of marriage, a trial court may enter an order of maintenance after considering all relevant factors, including the following:

(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

- (6) the standard of living established during the marriage;
- (7) the duration of the marriage;
- (8) the age and physical and emotional condition of both parties;
- (9) the tax consequences of the property division upon the respective economic circumstances of the parties;
- (10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;
- (11) any valid agreement of the parties; and
- (12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2004).

In the trial court's November 2004 order of dissolution, it considered the foregoing factors and ordered that Jeffrey pay permanent maintenance to Debra in the amount of \$750 per month.

¶ 31 *3. Cohabitation*

¶ 32 Jeffrey argues that the trial court should have terminated its order of maintenance because Debra was cohabitating with Wilson. We disagree.

¶ 33 a. Applicable Law and Standard of Review

¶ 34 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 2014).

¶ 35 To establish the cohabitation described in 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). 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." *Id.* at 209, 867 N.E.2d at 109-10.

¶ 36 If the moving party 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).

¶ 37 We will not reverse a trial court's finding about a *de facto* 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).

¶ 38 b. The Trial Court's Findings in This Case

¶ 39 The trial court found that Jeffrey met his initial burden by showing that Debra was engaged in a *de facto* husband-and-wife relationship with Wilson. In support of that determination, the court made the following factual findings. The court found that Debra and Wilson had engaged in an exclusive, monogamous dating relationship over a 10-year period beginning in 2005. Wilson was a truck driver who was generally "on the road" six days a week. Wilson spent nearly every Saturday night that he was in town with Debra, alternating between Debra's residence and his residence. Debra and Wilson had sex with each other consistently over the course of the relationship. They exchanged gifts periodically, and Wilson attended various family

events of Debra's. Debra and Wilson frequently went out to dinner together, and Wilson generally paid for Debra's meal. Wilson made various repairs to Debra's house over the course of the relationship. Wilson had a good relationship with Debra's grandchildren. Debra and Wilson took vacations together.

¶ 40 The trial court found further that Debra had presented evidence to rebut Jeffrey's initial showing of a *de facto* husband-and-wife relationship. In reaching that conclusion, the court relied on the following factual findings. The court found an "almost total lack of financial intermingling" between Debra and Wilson, noting the nonexistence of joint bank accounts, joint investments, or joint ownership of real or personal property. The court noted further that Debra and Wilson owned separate residences and paid their own household expenses. The court also found that the gift-giving was minimal, other than Wilson paying for Debra's meals when they went out to eat and Wilson's gift of \$1,000 toward Debra's attorney fees. In addition, the court found that during the week, Debra and Wilson maintained separate lives. Neither Debra nor Wilson stored clothing or furniture at the other's residence. The court also found that Debra and Wilson had no plans to be married and that no evidence established that either was named in the other's will or was an insurance beneficiary of the other.

¶ 41 The trial court ultimately found that, although this was a close case, equitable considerations weighed in favor of finding that no *de facto* husband-and-wife relationship existed.

¶ 42 c. The Trial Court's Finding That Debra Did Not Cohabitate
With Wilson Was Not Against the
Manifest Weight of the Evidence

¶ 43 The trial court carefully weighed the evidence when determining that no *de facto* relationship existed. Although the evidence established a long-term, monogamous sexual rela-

tionship between Debra and Wilson, certain key aspects of that relationship distinguished it from a *de facto* husband-and-wife relationship. In particular, the court relied on the fact that Wilson was "on the road" six days per week, which ensured that Debra and Wilson maintained separate lives. In addition, Debra and Wilson kept their economic lives almost entirely separate. They maintained separate residences and vehicles and paid their own household expenses. No comingling of funds occurred through a shared bank account or investment account. The only sharing of funds that occurred was occasional gift-giving and Wilson's paying for Debra's meals when they went out to eat. The court relied heavily on the economic independence of the parties when determining that no *de facto* husband-and-wife relationship existed. We agree that the economic independence of Debra and Wilson distinguished their relationship from a *de facto* husband-and-wife relationship. We therefore conclude that the trial court's finding was not against the manifest weight of the evidence.

¶ 44

4. *Change in Circumstances*

¶ 45

Jeffrey argues further that the trial court should have terminated its maintenance award because a substantial change in circumstances had occurred since the court's initial award in 2004. Specifically, Jeffrey alleges the following changes in circumstances: (1) Jeffrey was now employed in a lower-paying job and (2) Debra had failed to make reasonable efforts to become self-supporting.

¶ 46

a. *Applicable Law and Standard of Review*

¶ 47

An order for maintenance "may be modified *** only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2014). In determining whether a change in circumstances has occurred that would justify a modification of a maintenance order, a trial court "shall consider" the aforementioned factors listed in section 504(a) of the Dissolution

Act, along with the following factors:

- "(1) any change in the employment status of either party and whether the change has been made in good faith;
- (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;
- (3) any impairment of the present and future earning capacity of either party;
- (4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;
- (5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;
- (6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;
- (7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;
- (8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity

of marriage; and

(9) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5) (West 2014).

¶ 48 b. The Trial Court's Decision in This Case

¶ 49 In this case, the trial court found that a substantial change in circumstances had occurred since the entry of the original order of maintenance in 2004. The court relied on the following facts in reaching that determination. Eight years ago, Jeffrey married Susan Flesner, who earns a gross income of between \$50,000 and \$60,000. In addition, Susan brought \$80,000 into the marriage and inherited between \$60,000 and \$65,000 since marrying Jeffrey. Since 2004, Jeffrey has purchased a house and farmland worth \$150,000. Jeffrey now earns a net income of \$1,446.82 per month farming his mother's adjacent farmland. In February 2014, Jeffrey retired from Verizon, which resulted in his receiving \$287,000 in retirement funds and Debra's receiving \$167,000. In addition, Jeffrey received a severance package of \$47,500. After retiring from Verizon, Jeffrey began working for a construction company, earning between \$15.75 and \$17.50 per hour and working approximately 35 hours per week. In July 2014, Jeffrey purchased a motorcycle worth \$24,500. The court also found that Debra's cost of living had increased. The court concluded that the changes in circumstances warranted an increase in maintenance to \$1,100 per month.

¶ 50 In addition, the trial court rejected Jeffrey's claim that Debra had failed to make reasonable efforts to become self-supporting. See 750 ILCS 5/510(a-5)(2) (West 2014) (In deciding whether to modify maintenance, the court shall consider "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate."). The court noted that in 2004, Debra was working full-time as a

cook at a local school, earning a monthly net income of \$1,354.46. Debra continued her employment with the school and was now the head cook for three local schools, with a net income of approximately \$1,212.96 per month (although her gross income had increased slightly). Debra had acquired additional part-time employment cleaning her attorney's office, earning net income of \$134.36 every two weeks. The court noted that during the marriage, Debra was a stay-at-home mother to three children from 1976 to 1991. Based on Debra's age, skills, and the duration of the marriage, the court found that Debra had engaged in reasonable efforts to become self-supporting.

¶ 51 c. The Trial Court's Decision To Increase Maintenance Was
Not Against the Manifest Weight of the Evidence

¶ 52 We conclude that the trial court's finding of a change in circumstances warranting an increase in maintenance from \$750 to \$1,100 was not against the manifest weight of the evidence. Jeffrey's arguments to the contrary are not persuasive. Jeffrey argues that his retirement and acceptance of a lower-paying job constituted a change in circumstances justifying a termination of maintenance. In 2004, Jeffrey's net income was \$2,705 per month. His financial affidavit in this case listed his current net income as \$2,735. Although Jeffrey is correct that his personal net income has not increased significantly since 2004, his argument overlooks the economic contributions that Susan is making to the household and the increased assets Jeffrey has acquired since 2004. Susan earns an additional gross income of \$50,000 to \$60,000 per year. In addition, Jeffrey received \$287,000 in retirement funds and \$47,500 in severance payments when he retired from Verizon, while Debra received \$167,000 in retirement funds. Jeffrey also acquired a \$150,000 tract of land, and Susan contributed \$80,000 in assets to the marriage. Based on Susan's additional income and Jeffrey's increased assets, the court's decision to increase maintenance was not against the manifest weight of the evidence.

¶ 53 We also disagree with Jeffrey's contention that Debra had failed to make reasonable efforts to become self-supporting. Debra continues to be employed as the head cook for three schools. Although that job does not require her to work during the summers, Debra has acquired additional part-time employment cleaning her attorney's office. Considering Debra's education and the time spent raising children during the marriage, Debra has made reasonable efforts to become self-supporting.

¶ 54 B. Attorney Fees

¶ 55 Jeffrey argues that the trial court abused its discretion by granting Debra's motion for interim attorney fees and denying his motion for a final contribution of attorney fees. Debra cross-appeals, arguing that the court abused its discretion by not awarding her full request for final contribution of attorney fees and by denying her motion for interim appellate attorney fees.

¶ 56 1. *Standard of Review*

¶ 57 A trial court's decision to award or deny attorney fees will be reversed only if the court abused its discretion. *In re Marriage of Haken*, 394 Ill. App. 3d 155, 160, 914 N.E.2d 739, 743 (2009).

¶ 58 2. *Interim Trial Attorney Fees*

¶ 59 Jeffrey argues that the trial court erred by granting Debra interim attorney fees in the amount of \$6,000. We disagree.

¶ 60 a. *Statutory Language*

¶ 61 Section 508(a) of the Dissolution Act provides that "[i]nterim attorney[] fees and costs may be awarded from the opposing party, in a pre-judgment dissolution proceeding in accordance with subsection (c-1) of Section 501 and in any other proceeding under this subsec-

tion." 750 ILCS 5/508(a) (West 2014). Although inartfully phrased, section 508(a) allows the trial court to award interim attorney fees in accordance with section 501(c-1) during any proceeding listed in section 508(a), including "[t]he enforcement or modification of any order or judgment under this Act." 750 ILCS 5/508(a)(2) (West 2014). This case was a proceeding to modify maintenance. Therefore, the trial court could award interim attorney fees in accordance with section 501(c-1).

¶ 62 Section 501(c-1) allows for interim attorney fees to be awarded for "fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred." 750 ILCS 5/501(c-1) (West 2014). The court "shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation." 750 ILCS 5/501(c-1)(3) (West 2014). An assessment of interim fees "shall be without prejudice to any final allocation" of fees. 750 ILCS 5/501(c-1)(2) (West 2014).

¶ 63 In assessing an interim award, the trial court shall consider all relevant factors, including the following: (1) the income and property of each party; (2) the needs of each party; (3) the earning capacity of each party; (4) any impairment to the present earning capacity of each party, including age and health; (5) the standard of living established during the marriage; (6) the complexity of the issues; (7) each party's access to relevant information; (8) the amount of payments made or reasonably expected to be made to the attorney for the other party; and (9) any other factor the court finds to be just and equitable. 750 ILCS 5/501(c-1)(1) (West 2014).

¶ 64 b. Trial Court's Decision in This Case

¶ 65 In this case, the trial court found that Jeffrey was much more able to pay attorney fees than was Debra. We conclude that the court did not abuse its discretion in awarding Debra

interim attorney fees. The evidence established that Debra's income and earning capacity were less than Jeffrey's and that Jeffrey had significant assets. In light of the surrounding financial circumstances, the court's decision to award Debra \$6,000 in interim fees was not an abuse of discretion.

¶ 66 *3. Final Allocation of Attorney Fees*

¶ 67 a. Statutory Language

¶ 68 Section 508(a) of the Dissolution Act provides that a final award of attorney fees made after the judgment of dissolution must be made in accordance with section 503(j). 750 ILCS 5/508(a) (West 2014). Section 503(j)(2) states that an award of contribution of attorney fees shall be based on the criteria for division of marital property under section 503 and, if maintenance has been awarded, on the aforementioned criteria for an award of maintenance under section 504. 750 ILCS 5/503(j)(2) (West 2014).

¶ 69 Section 503(d) establishes the following criteria for the division of marital property: (1) each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital property; (2) the dissipation of each party of the marital property; (3) the value of property assigned to each spouse; (4) the duration of the marriage; (5) the economic circumstances of each spouse; (6) any obligations and rights arising from a prior marriage of either party; (7) any prenuptial or postnuptial agreement of the parties; (8) the age, health, occupation, income, skills, employability, estate, liabilities, and needs of the parties; (9) the custodial provisions of any children; (10) whether the apportionment is in lieu of or in addition to maintenance; (11) the opportunity of each spouse to acquire future assets and income; and (12) the tax consequences of the property division. 750 ILCS 5/503(d) (West 2014). The trial court was required to consider the foregoing factors along with the aforementioned criteria for maintenance under

section 504(a) (750 ILCS 5/504(a) (West 2014)).

¶ 70 b. Trial Court's Decision in This Case

¶ 71 In this case, the trial court determined that the previous interim award of \$6,000 to Debra was a sufficient final contribution award. The court therefore refused to award additional fees to either party. We conclude that the court's decision was not an abuse of discretion.

¶ 72 The trial court stated that, because an award for attorney fees was based in part on the maintenance factors, Debra would normally be entitled to a final contribution of attorney fees. However, the court found further that any potential award to Debra should be tempered by Debra's own conduct. Specifically, the court found that Debra's relationship with Wilson caused Jeffrey to file, in good faith, his petition to terminate maintenance, which initiated this proceeding. The trial court did not abuse its discretion in reaching that conclusion. Section 504(a)(12) allows the court to consider "any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a)(12) (West 2014).

¶ 73 In this case, the trial court found that it was just and equitable to consider Debra's role in the existence of these proceedings. The court further found that because Debra had a role in causing the proceedings, her fee award should be reduced. As a result, the court adopted the interim award of \$6,000 as a final contribution. In light of the court's careful consideration of the surrounding factors, we conclude that the court did not abuse its discretion.

¶ 74 4. *Interim Appellate Attorney Fees*

¶ 75 Debra argues that the trial court abused its discretion by denying her motion for interim appellate attorney fees. We disagree.

¶ 76 a. Jurisdiction

¶ 77 Although neither party questions our jurisdiction to hear this issue, we have an

independent duty to examine our appellate jurisdiction. *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 33, 988 N.E.2d 1102.

¶ 78 In this case, Debra filed her motion for interim appellate attorney fees after Jeffrey had filed his notice of appeal from the trial court's May 2015 order. Generally, "[o]nce the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the circuit court." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173, 950 N.E.2d 1136, 1142 (2011). However, the circuit court retains jurisdiction "to determine matters collateral or incidental to the judgment." *Id.* at 173-74, 950 N.E.2d at 1142. " 'Collateral or supplemental matters include those lying outside the issues in the appeal or arising subsequent to delivery of the judgment appealed from.' " *Moening v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 22, 966 N.E.2d 443 (quoting *Town of Libertyville v. Bank of Waukegan*, 152 Ill. App. 3d 1066, 1073, 504 N.E.2d 1305, 1310 (1987)). Further, collateral or incidental matters "d[o] not affect or alter the issue" from which the notice of appeal was filed. *General Motors*, 242 Ill. 2d at 175, 950 N.E.2d at 1143.

¶ 79 Debra's motion for interim appellate attorney fees was collateral and incidental to the judgment appealed from in Jeffrey's notice of appeal. The trial court therefore had jurisdiction to address the motion. To hold otherwise would effectively bar the ability of a party to request interim appellate attorney fees. Debra had no reason to petition for interim appellate attorney fees until Jeffrey initiated appellate proceedings by filing a notice of appeal. That is, a motion for interim appellate attorney fees filed prior to either party filing a notice of appeal would have been denied because no appellate proceedings existed. We conclude that the court had jurisdiction to hear and decide Debra's motion for interim appellate attorney fees.

¶ 80 This court has jurisdiction to hear Debra's cross-appeal. Her notice of cross-

appeal was filed on July 6, 2015, and stated that it was an appeal from the trial court's (1) June 11, 2015, judgment denying Jeffrey's motion to reconsider and (2) July 2, 2015, judgment denying Debra's motion for interim appellate attorney fees. Debra's notice of cross-appeal was filed within 30 days of both judgments and is therefore timely. Ill. S. Ct. R. 303(a)(3) (eff. Jan. 1, 2015). We have jurisdiction to hear Debra's claim that the trial court abused its discretion by denying her request for interim appellate attorney fees.

¶ 81 b. Merits of Debra's Argument

¶ 82 Debra's motion requested interim appellate attorney fees. Interim appellate attorney fees are available under section 508(a) of the Dissolution Act, which allows a trial court to award, *inter alia*, interim attorney fees for "[t]he defense of an appeal of any order or judgment under this Act" or "[t]he prosecution of any claim on appeal." 750 ILCS 5/508(a)(3), (a)(3.1) (West 2014); see *In re Marriage of Talty*, 166 Ill. 2d 232, 240, 652 N.E.2d 330, 334 (1995) (holding that prior language of section 508(a) authorized "a prospective award of attorney fees to a party for the defense of an appeal"). In this case, the trial court denied Debra's request for interim appellate attorney fees.

¶ 83 In deciding whether to award Debra reasonable interim appellate attorney fees, the trial court was obligated to consider all relevant factors, including the factors explicitly listed in section 501(c-1)(1) of the Dissolution Act. 750 ILCS 5/501(c-1)(1) (West 2014). In this case, the trial court listed four reasons for denying Debra's request: (1) interim fees should be awarded cautiously; (2) the marital estate from which to pull interim fees no longer existed; (3) whether Debra was cohabitating with Wilson was a close case; and (4) the court found it more appropriate to award appellate attorney fees after the appeal has concluded.

¶ 84 We conclude that the trial court did not abuse its discretion by denying Debra's

request for interim appellate attorney fees. The court found that a potential award of appellate attorney fees was more appropriate after the conclusion of the appeal, when the court would know which party successfully defended and prosecuted which parts of the appeal. The court could conclude that Debra had sufficient assets to pay her appellate attorney fees during the pendency of the appeal. Considering the closeness of the cohabitation issue, the court acted reasonably in denying Debra's request for interim appellate attorney fees, while leaving open the opportunity for the parties to request appellate attorney fees after the conclusion of the appeal.

¶ 85

III. CONCLUSION

¶ 86

For the foregoing reasons, we affirm the trial court's judgment.

¶ 87

Affirmed.