2018 IL App (1st) 171852-U

SIXTH DIVISION
November 9, 2018

No. 1-17-1852

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
CAROL J. REDA,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 10 D 9246
and	)	
	)	
JOHN A. REDA,	)	Honorable
	)	Gregory Ahern,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying husband's petition to modify or terminate maintenance where he failed to prove a substantial change of circumstances had occurred; affirmed.

¶ 2 Respondent, John A. Reda, appeals a postdissolution order that denied his petition to modify or terminate maintenance. John argues that the trial court should have granted his petition because a substantial change in circumstances occurred when his ex-wife/petitioner, Carol J. Reda, inherited approximately $2.5 million. We find the trial court's decision was proper and affirm.

¶ 3 BACKGROUND

¶ 4 This is the second time this case is on appeal. The first appeal, *Reda v. Reda*, 2016 IL App (1st) 152480-U, involved issues unrelated to the instant appeal, and thus we set forth only those facts relevant to this appeal.

¶ 5 John and Carol were married on February 28, 1976, in Cook County. Three children were born during their marriage. On September 21, 2010, Carol filed a petition for dissolution of marriage and a judgment for dissolution of marriage was entered on December 10, 2013. The judgment for dissolution of marriage incorporated the parties' October 23, 2013, marital settlement agreement (MSA). Article II of the MSA set forth the following provisions for maintenance:

> "2.1 [John] shall pay [Carol] monthly maintenance of Ten Thousand Dollars ($10,000) payable Five Thousand Dollars ($5,000) on the 10th and Five Thousand Dollars ($5,000) on the 25th of each month, starting November 10, 2013.
>
> 2.2 In addition, and constituting maintenance as well, commencing in 2013, [John] shall pay [Carol] thirty percent (30%) of all distributions he receives from Sound Distribution and Sales, Ltd. [John] may make changes to the business structure of Sound Distribution and Sales, Inc. [*sic*] provided that such changes are made in good faith, that they do not diminish the overall amount of maintenance that [Carol] would otherwise have received, and that [Carol] has been given sixty (60) days' notice of any planned change prior to the date it is intended to be made. [John] shall provide [Carol] copies of all income tax returns, certified by the company's accountants, within ten (10) days of the filing of such returns.
>
> 2.3 Said maintenance shall be taxable to [Carol] pursuant to Sections 71 and 215 of the Internal Revenue Code as amended or any identical or comparable provision of a

federal revenue code hereafter enacted or modified. Maintenance shall be reviewable seven (7) years from the date of the Judgment.

2.4 [John] hereby waives any and all rights he may have against [Carol] to maintenance and acknowledges that he cannot come into court later and request maintenance."

¶ 6 The MSA also stated that all marital investment accounts would be divided equally and that a 50% interest in certain real property would be transferred to Carol. All of John's retirement accounts, such as a 401(k) or individual retirement account (IRA), relating to his employment at Sound Distribution and Sales, Ltd. (Sound Distribution) were to be divided equally. Also, the MSA stated that John was required to pay Carol $250,000 within 45 days of October 23, 2013.

¶ 7 On December 8, 2015, John filed a petition to modify or terminate maintenance. John's petition stated that Carol's mother, Mabel Jensen, died in September 2015, and that upon her death, "Carol's mother left an estate the exact extent of which is unknown to John but which he is informed and believes includes assets of at least $2.5 million in value." The petition alleged that Carol and her brother were Mabel's sole heirs and "on information and belief have inherited all of the assets of [their] mother's estate." Further, John's petition argued that Carol had no dependents, and thus her inheritance from Mabel was a substantial change in circumstances because she could support herself without assistance from John.

¶ 8 On April 28, 2016, Carol filed her answer to John's petition, stating that as of that date, she had not received any funds from Mabel's estate. Carol further asserted, "For the year 2015 and up to the filing of this answer[,] Carol's only income is from payments of maintenance from John Reda. She is not living the life style she maintained during her marriage."

¶ 9 On April 20, 2017, a hearing was held on John's motion to terminate or modify maintenance. In opening statements, John's attorney stated that Mabel died in September 2015 and left an estate of approximately $475,000 to be split between Carol and her brother Chris, who were both executors of Mabel's estate. In addition, Carol's father, Christ Jensen, died in 1986 and left a will that established a residuary trust for which Mabel was the beneficiary. Christ's will stated that upon Mabel's death, the assets of the trust were to be immediately distributed to the beneficiaries, *i.e.* Carol and Chris. John's attorney further stated that as of September 2015, the assets of the trust were valued at over $5 million, less a loan of $900,000, leaving about $4.6 million of income-producing assets. Thus, upon Mabel's death, Carol was entitled to receive half of Mabel's $475,000 estate and half of her father's $4.6 million trust. John's attorney pointed out that Carol had not yet received any of those assets, but argued that John had still shown a substantial change in circumstances occurred because although the assets had not been distributed, the money still belonged to Carol upon Mabel's death. In response, Carol's attorney stated that John had full knowledge of the trust and that he participated in a lot of investments. Carol's attorney further asserted that the distribution of marital assets was divided 50/50, rather than 60/40 as Carol wanted, because Carol's trust was a substantial nonmarital asset that was part of the MSA negotiations.

¶ 10 At the subsequent hearing, John testified that he was 64 ½ years old and his health was "[n]ot good at all" because he had an enlarged heart with a leaky aortic valve, an esophagus plug block, and a swollen left kidney. John testified that he was employed by Sound Distribution, a Chapter Sub S corporation of which he was a 50% owner. John testified that he had a 401(k) valued at around $40,000, and "[n]ot a penny" more in retirement assets.

¶ 11 On cross-examination, John testified that he was not involved with the trust, that Carol's father, Christ Jensen, set it up, and that Carol was not involved either. Carol's counsel attempted to impeach John by confronting him with the following exchange from John's discovery deposition:

> "MR. KNEAFSEY [JOHN'S ATTORNEY]:
>
> Q. On page 5 I asked - the question was asked, upon her death[,] Carol's mother left an estate, the exact extent of which is unknown, but which he is informed and believes includes $2.5 million.
>
> That was in your petition.
>
> And the question was asked, who informed you that it was at least 2.4 million?
>
> Answer. 'I was involved with A.G. Edwards years back when the money was set up and I knew how many shares. I knew everything about the estate.'
>
> Do you remember giving that answer?"

John responded that Carol's attorney was asking two different questions—one regarding whether John set up the trust and one regarding whether John knew what was in the trust. When asked if he knew what was in the trust, John responded, "No. I had no idea it was $5.5 million. I knew what it was back then with A.G. Edwards when *** Carol and I both had information." In approximately 1994, John had seen a report stating that the trust had a balance of around $1.4 million. John explained that he stated that the trust had a value of $2.5 million in his petition to terminate or modify maintenance because "I'm a CPA. So I estimated that it went up to - over the years with that amount of money probably went up to 2.5. It was an estimate. I guess a lucky one."

¶ 12 John was also asked whether he was aware of the trust when he and Carol entered into the MSA and he answered, "I didn't go after the trust. I gave her the trust. I didn't touch it." John was again asked if he was aware of the trust and he responded, "I didn't go after the trust. In the settlement I said she can have it." After being pressed on the question, John admitted that he was aware of the trust when the parties entered into the MSA, but testified that he did not have an idea of how much was in the trust.

¶ 13 Regarding his recent tax returns, John testified that his combined income was $365,934 in 2013, $729,013 in 2014, and $626,395 in 2015. John's 2014 tax return reflected that he had pensions and annuities in the amount of $668,365, but explained that was given to Carol in the divorce, which is why his financial affidavit reflects that his 401(k) had a balance of $39,000. John also testified that he bought a house in California in 2015 for approximately $750,000. John further confirmed that in 2015, he and his partner sold "the east office" of Sound Distribution for $600,000. John also admitted that Sound Distribution bought a Bentley for $125,000 that he drove as a company car, and commented that it was "cheaper than my Mercedes." John stated that after the divorce, he joined a private country club in Burbank, California, and purchased two restaurants— Killer Shrimp Marina for $50,000 and Killer Shrimp Hermosa for $100,000.

¶ 14 During redirect examination, John stated that he knew that the trust was Carol's nonmarital property and that he did not have any control over it. John also testified that he was not shown any account statements for the trust. John also clarified that prior to the divorce he owned three other Killer Shrimp restaurants and that he had paid Carol $250,000 in exchange for the restaurants remaining his sole property, rather than being divided up 50/50 as the marital stocks and equity interests had been.

¶ 15 John's answers to post-decree interrogatories were also admitted at the hearing. In one interrogatory, John was asked to state what facts he relied upon to believe that Carol's income in 2014 or 2015 had substantially changed and his answer was, "[John] has not alleged that [Carol's] income substantially changed in 2014 or 2015."

¶ 16 Next, John's attorney presented the trial court with the complete transcript from the evidence deposition of Carol's brother, Chris, and read certain excerpts into the record. Chris testified that as of January 5, 2017, there had not been any distributions from Mabel's estate. Chris also testified that he had not discussed trust distributions with Carol because "[s]he has not requested anything." Chris explained that the reason that no distributions had been made was because:

> "A good portion of the investments are long term, so you cannot just go in there and cash them out. I think there's two in particular that have got a couple years to go and maybe longer on another one. So because of the long-term investments, because of the inability to cash out, to divide the investments, my sister decided that this should be for her retirement, which she doesn't need now, and we'll just leave the money in there and hope it grows for when we really need it."

Chris further stated that it was his understanding that the investments related to the trust were "not like stock" and could not be divided or liquidated.

¶ 17 Carol testified next at the hearing. She stated that she was 61 years old and had a high school education. Carol testified that she was married to John for 37 years, they had 3 children, and she had been primarily responsible for raising the children because John travelled a lot while building his business. Carol testified that during their marriage, they lived in a five-bedroom home with a swimming pool and belonged to a country club. Carol stated that their family

previously took vacations ranging in cost from $5,000 to $15,000. Carol testified that she currently did not own a house and no longer belonged to any private clubs.

¶ 18 Carol testified that during the divorce proceedings, she was required to reveal the trust and its contents and further stated that when she and John were negotiating the MSA, her mother was 94 years old. When asked what role the trust played in the MSA, Carol responded, "Well, we were trying to base the amount of my maintenance and the length of my maintenance, splitting up marital assets, but the trust would always come up." Carol explained that she had tried to get a higher amount of maintenance and a 60/40 split of assets, but that she also wanted the proceedings to be over, so she settled. When asked if the trust was constantly an item, Carol responded, "Constantly." When asked if it was her desire or request not to receive distributions from the trust, Carol responded, "I wouldn't call it a request. The money is—the assets are in these long-term investments." Carol also testified that if distributions were able to be made, then she would take them. Specifically, she stated, "It is my desire to receive distribution when the assets are free to be distributed."

¶ 19 Financial affidavits from both John and Carol were admitted into evidence at the hearing. John's financial affidavit was dated July 28, 2016, and reflected that he was self-employed and had so far earned $279,026 as of July 25, 2016, for the year 2016. Regarding his income and taxes for the prior year, John's affidavit stated that his gross income was $592,700. John's gross monthly income was $39,936, his total monthly deductions (including his $10,000 maintenance payment to Carol) were $25,405, and thus his monthly net income was $14,541. John's affidavit stated that his total monthly living expenses and debt payments were $24,126, resulting in a monthly income deficiency of $9,585. John's affidavit also showed that he had various checking and savings accounts, retirement benefits, and business ownership interests.

¶ 20 Carol's financial affidavit was dated June 13, 2016, and reflected that her gross monthly income was $10,000 and was made up solely of John's maintenance payment. Carol's monthly deductions totaled $3,496.83, leaving her total monthly net income at $6,503.17. Carol's total monthly living expenses were $6,135.81, and thus her total income available per month was $367.36. Carol's affidavit showed that she had various checking and savings accounts, and a UBS asset investment account with a balance of $447,237. Carol's affidavit also reflected that she had $258,440 in an IRA that she received from John.

¶ 21 On June 28, 2017, the court orally delivered its ruling, which ultimately denied John's petition. The court stated that it found both John and Carol credible, specifically finding as follows:

> "I found Carol Reda very credible on all the issues, except for when it came to whether she could take the money right away.
>
> I do believe that if she wanted the money right away, she could have gotten her brother to disperse the money. I don't think that's really an issue.
>
> But when it came to John Reda testifying, you know, he testifies in his deposition that he knows about the trust back in 1994. It was worth 1.5, or her share of it was. And he knew the number, 2.5, he threw out. And that's exactly right around where it is. And he's a finance guy. He's a businessman. He's a business owner. He has many investments. He's very smart. And he handled all the finances.
>
> And so he kind of backpedaled a little bit at the hearing, saying -- he kind of downplayed his knowledge. But it's clear through the deposition how he was impeached -- and, actually, he eventually admitted it in court that he did know. He knew exactly what was coming to her. He's the one that looked at it, read it, and knew what it meant."

¶ 22 The court further stated that it had to look at what the parties bargained for when they entered into the MSA. The court noted that there was testimony from Carol that she wanted a higher amount of maintenance for a longer period of time and that she wanted a 60/40 split on assets. The court stated that "the lower amount of maintenance and only [7] years reviewable for a 37-year marriage when the wife had a high school education" almost seemed "unconscionable." The court, however, explained that such an agreement made sense in light of Carol's testimony that when the parties were negotiating the MSA, the trust would constantly come up. The court again referred to Carol's testimony as "credible" and compared hers with John's, stating "I think it's telling that when John was asked that question, he had no idea how they came to [7] years and $10,000 [per month]. All these things that were going on: [a] divorce that had pended for a couple years and him knowing exactly that she's going to get this." The court opined that "[t]he [7]-year reviewable maintenance in a 37-year marriage with this disparity doesn't make any sense. But it makes some sense when you take [Carol's] testimony that says, 'The trust was always a factor. My mother was 94 years old.' " In conclusion, the court determined that no substantial change in circumstances occurred in this case and entered an order denying John's petition to modify or terminate maintenance. Specifically, the court stated:

> "And I think that it's not a substantial change based on this agreement. It's a substantial change -- inheriting [$2.5] or $2.6 million is a substantial change in cases if -- but not in this case.
>
> This case it was part of the agreement. It's the only explanation for why it's not permanent maintenance. I can't think of any other -- and why it's seven years reviewable."

¶ 23 John filed his timely notice of appeal on July 25, 2017.

¶ 24 ANALYSIS

¶ 25 John argues that Carol's inheritance of $2.5 million is a substantial change in circumstances and the changed financial circumstances justified terminating maintenance. John also asserts that the trial court both failed to apply and misapplied the statutory factors, and contends that Carol's inheritance was an expectancy that could not properly have been, and was not, considered in the pre-decree proceedings.

¶ 26 John argues that we should apply *de novo* and manifest weight of the evidence standards of review to his various contentions. However, John forfeited this issue because he provided no citation to authority for his contention that *de novo* review applies to some issues and a manifest weight of the evidence standard applies to others. See *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56 ("A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7), (i) [citation]. Failure to comply with the rule's requirements results in forfeiture.")

¶ 27 Even if John had not forfeited his arguments regarding the applicable standard of review, we would reject his contention that we review *de novo* the issue of whether the trial court properly denied modification. It is well-settled that on review of the circuit court's decision to modify or terminate maintenance, we will not disturb the court's judgment absent a clear abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24. "An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Id.* Additionally, we may affirm the judgment of the circuit court on any basis contained in the record. *Id.*

¶ 28 Pursuant to section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act), "[a]n order of maintenance may be modified or terminated only upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a-5) (West 2012). "Courts in Illinois have held that 'substantial change in circumstances' as required under section 510 of the Act means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed." *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198 (2011). Here, John's petition argued that a substantial change in circumstances occurred because Carol's inheritance alleviated her need to receive maintenance. The party requesting to modify maintenance has the burden to show that a substantial change in circumstances has occurred. *Id.*

¶ 29 When determining whether a modification is appropriate, a court considers the following factors from sections 510(a-5) and 504(a) of the Act. See 750 ILCS 5/510(a-5) (West 2012); 750 ILCS 5/504(a) (West 2012). It is important to note that, "[i]n reaching its decision, the court must consider all relevant statutory factors but need not make explicit findings as to those factors." *In re Marriage of Virdi*, 2014 IL App (3d) 130561, ¶ 28. Here, the court did not explicitly cite to the factors enumerated in section 510(a-5) and section 504(a), but we nonetheless find its analysis reflects a proper consideration of those factors, and its ultimate decision to deny John's petition was not an abuse of discretion.

¶ 30 John argues that Carol's inheritance was a substantial change in circumstances that justified terminating maintenance. John asserts that the trial court acknowledged that a $2.5 million inheritance, taken alone, is a substantial change in circumstances, and that because of this acknowledgement, the trial court should have determined the extent to which maintenance should have been modified. John cites to *In re Marriage of Benink*, 2018 IL App (2d) 170175, as support for his position. In that case, the court stated that, "once the trial court found ***

there had been a substantial change, the issue of *whether* a modification should be granted was resolved, and the only matter left for its determination was the appropriate *amount* of the modified child support obligation during the period between the filing of the petitions to modify and the court's decision." (Emphasis in original.) *Id.* ¶ 34.

¶ 31 We note a few pertinent distinctions from that case. In *Benink*, the court was concerned with the modification of child support, while we are concerned with a petition to modify maintenance. More importantly, the trial court there did, in fact, determine that a substantial change in circumstances occurred. Here, contrary to *Benink*, the trial court did not find that a substantial change in Carol's circumstances. Instead, the trial court actually stated, "And I think that it's not a substantial change based on this agreement. It's substantial change -- inheriting [$2.5] or $2.6 million is a substantial change in cases if -- but not in this case." It is clear from the foregoing statement that the trial court acknowledged that a $2.5 million inheritance may, in some cases, be a substantial change, but twice stated that in this case, it was not a substantial change. Therefore, *Benink* is inapposite.

¶ 32 Although we agree with the trial court that no substantial change of circumstances occurred and that no modification of maintenance was ultimately warranted, the reasoning for our decision differs somewhat from the trial court. The divergence of our reasoning from that of the court below is of little consequence because we may affirm the judgment of the circuit court on any basis contained in the record. *Heroy*, 2017 IL 120205, ¶ 24.

¶ 33 Here, the trial court delivered a detailed ruling on John's petition to modify or terminate maintenance, finding that based on the facts of this case, no significant change in circumstances had occurred, and thus no modification of maintenance was warranted. The court found it significant that although they were married for 37 years and Carol only had a high school

education, the parties' MSA provided Carol with $10,000 per month in maintenance and stated that maintenance was reviewable after 7 years. After hearing testimony from John and Carol, the court found that the parties must have contemplated the effect of Carol's inheritance when they agreed to the aforementioned maintenance provision. The court went so far as to refer to such an arrangement as "unconscionable" if the parties had not taken into consideration that Carol would eventually inherit the estate and trust from her mother, who was 94 years old at the time the MSA was signed.

¶ 34 John argues that Carol's inheritance was an expectancy that could not have been properly considered in the pre-decree proceedings. He cites to *In re Marriage of Rivera and Sanders-Rivera*, 2016 IL App (1st) 160552, ¶ 44, as support for his contention that Carol's inheritance from her mother was not property, but rather an expectancy. We reject John's reliance on *Rivera* because the portion of the decision to which he cites is merely a recitation of the petitioner's argument and is not the court's holding. *Id.* In *Rivera*, the court was tasked with answering the following certified question: "Whether the settlement proceeds received from a wrongful conviction action are marital property when (a) the coerced confession and initial conviction occurred before the marriage, and (b) the conviction was reversed during the marriage." *Id.* ¶ 1. As is evident from this question, the issues in *Rivera* are unlike the issues before this court and we decline John's request to find that case instructive.

¶ 35 Instead, we find relevant that this court has recognized that, "[i]n determining the amount of maintenance, a trial court should consider the parties' income at the time of the dissolution as well as their *potential income*." (Emphasis added.) *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 120. Here, Carol testified that she was required to reveal the trust and its contents prior to entering into the MSA and further stated that when she and John were negotiating the

MSA, her mother was 94 years old. Similarly, when asked at trial whether he was aware of the trust, John initially evaded the question by answering, "I didn't go after the trust. I gave her the trust. I didn't touch it." However, when pressed, John answered the question and admitted that he was aware of it. The testimony, as a whole, indicates that the parties were aware of the existence of the trust, its contents, and Carol's mother's advanced age. As a result, we find that the trial court's determination that Carol's trust must have been taken into consideration during the negotiations of the MSA was not an abuse of discretion, where any proceeds from the trust could have been viewed as potential income and properly considered by the court. See *Id.*

¶ 36 However, even assuming *arguendo* that the trial court improperly determined that the parties must have contemplated the trust and its contents when they entered into the MSA, we would still affirm its decision. See *Heroy*, 2017 IL 120205, ¶ 24. The record shows that John failed to meet his burden to prove that a substantial change in circumstances occurred where in post-decree interrogatories, John admitted that he had not alleged that Carol's income substantially changed in 2014 or 2015, and it is undisputed that Carol had not received any money to date from her mother's estate or the trust. See *Anderson*, 409 Ill. App. 3d at 198 (party requesting modification of maintenance has the burden to show that a substantial change in circumstances has occurred). This court is perplexed how John could expect to satisfy his burden to show that a substantial change in circumstances occurred when he filed his petition to modify or terminate in December 2015, but admitted in his interrogatories that he "has not alleged that [Carol's] income substantially changed in 2014 or 2015." John has represented that he is seeking modification based on a change of Carol's circumstances, not his own. In fact, in his reply brief, John specifically states, "[h]is petition is based on the change in Carol's circumstances in September 2015, not on his own circumstances." Yet, John admitted in his

interrogatories that he is not alleging that Carol's financial circumstances changed in 2015. As a result, it is somewhat unclear what change of circumstances John intended to assert here.

¶ 37 John cites to *In re Marriage of Waldschmidt*, 241 Ill. App. 3d 7, 11 (1993), and *In re Marriage of Zeman*, 198 Ill. App. 3d 722 (1990) as support for his contention that a modification or termination of maintenance was justified. We find neither of these cases favors John's position.

¶ 38 In *Waldschmidt*, the trial court originally ordered the wife to receive a certain percentage of her husband's income. *Waldschmidt*, 241 Ill. App. 3d at 8. The husband filed a petition to reduce or terminate maintenance, arguing that his income had decreased after his retirement while the wife's income improved as a result of an inheritance. *Id.* The trial court initially denied the husband's petition but later modified its order and reduced the wife's maintenance by lowering the percentage of his income that she received. *Id.* at 8-9. The husband filed another petition 18 months later, arguing that the income his wife received from her inherited property continued to rise. *Id.* at 9. The trial court determined that there was not a substantial increase in the wife's income and denied the husband's petition. *Id.* at 10. On appeal, the court reversed and remanded with directions to terminate the wife's maintenance. *Id.* at 13. The court relied on the wife's recent tax returns which showed that the wife's gross income increased by 21% from 1988 to 1989, and increased another 8.5% in 1990. *Id.* at 11. Specifically, the wife's gross income was $24,113 in 1988, $29,096 in 1989, and $31,524 in 1990. *Id.* The court found pertinent that the wife's income had risen to $31,524, while the husband's income had dropped to $21,418. *Id.* at 13. The court explained that, "Maintenance should be terminated, even after a long-term marriage, when the spouse receiving the maintenance has become virtually self-sufficient." *Id.* The court further opined that based on the facts of the case before it, "[a]

maintenance order requiring the financially disadvantaged spouse to pay maintenance to the financially advantaged spouse cannot be justified." *Id.*

¶ 39 In *People v. Zeman*, 198 Ill. App. 3d 722, 727-28 (1990), a case similar to *Waldschmidt*, the husband filed a petition to modify maintenance, arguing that a substantial change in circumstances had occurred because their youngest child was 20 years old; the husband had contributed substantial amounts toward the college and living expenses of the children; the wife had a master's degree, was employed, and earned $25,000 annually; the wife had recently sold the former marital residence; and the wife had inherited substantial lakefront property. At a hearing, the wife testified that after the judgment for dissolution of marriage was entered, she received several inheritances, including $17,000 from her aunt and, from her father, $50,000 and lakefront property valued at $125,000 that generated $700 per month in rent nine months out of the year. *Id.* at 729-30. From another person, the wife inherited $66,000, some silver coins, a gun collection, and a car, and she expected to receive an additional $220,000 in stocks. *Id.* The trial court granted the husband's petition to modify maintenance, finding that a substantial change of circumstances occurred because the minor children were emancipated, the husband was paying all of the college expenses, and the wife had inherited "substantial sums, the majority of which are income producing." *Id.* at 731.

¶ 40 On appeal, the wife argued, in relevant part, that the trial court erred when it determined that the inheritances she received constituted a substantial change in circumstances. *Id.* at 732. Specifically, the wife contended the trial court failed to determine the amount of income that could be generated from the inheritances, rather than their value. *Id.* at 732. This court found that the "trial judge did, in fact, consider the income potential of [the wife's] inheritances" in determining that the majority of the inheritances were income-producing. *Id.* at 733.

¶ 41 We find that the case before us differs from *Waldschmidt* and *Zeman* because unlike those cases, John presented no evidence that Carol received any income from her inheritance. In *Zeman*, the court referenced specific amounts that the wife had received, including $17,000 from an aunt, $50,000 and an income-producing property valued at $125,000 from her father, and $66,000 from another individual. *Zeman*, 198 Ill. App. 3d at 727. Similarly, in *Waldschmidt*, the husband presented evidence that the wife's gross income increased by nearly 30% over a three-year period. *Waldschmidt*, 241 Ill. App. 3d at 11. Here, it is undisputed that Carol has not received any distributions from the trust. Carol's financial affidavit reflects that none of the trust assets have yet been transferred into her name. Since the parties entered into the MSA, Carol's income has not changed at all, and thus it certainly has not changed substantially. Additionally, according to Carol's financial affidavit, the only monthly income she receives is $10,000 in maintenance from John. Unlike the wives in *Waldschmidt* and *Zeman*, Carol is not generating any income from her inheritance.

¶ 42 When Chris was asked at his evidence deposition why there had not yet been any distributions from the estate, he explained that he and Carol had not had a need to make a distribution yet, and that because he thought there was still "something going on in the court[,]" he was unsure "if it was cleared to be distributed or not yet." We find this relevant because it indicates that it may not yet be possible for Carol to receive distributions. We recognize that "[m]aintenance should be terminated, even after a long-term marriage, when the spouse receiving the maintenance has become virtually self-sufficient." *Waldschmidt*, 241 Ill. App. 3d at 8. Here, it is apparent that a termination of maintenance is unwarranted because the evidence of Carol's financial circumstances shows that she is no closer to being self-sufficient now than she was at the time the MSA was entered. Her monthly income solely consists of maintenance

from John. Unlike *Waldschmidt*, where the court was able to quantify a percentage increase in the wife's income, here, there has been no change in Carol's income, and thus we find a modification of maintenance to be unworkable. Perhaps at some point, either when maintenance becomes reviewable on December 10, 2020, per the MSA, or when an actual, substantial change in Carol's financial circumstances occurs, a petition to modify or terminate maintenance might garner a different ruling.

¶ 43 As a final matter, we point out that in John's opening brief, he states that the basis of his petition to modify maintenance "was that Carol's financial circumstances had substantially changed because, in September 2015, Carol's mother, Mabel Jensen, died, and as a result Carol had inherited approximately $2.5 million in liquid assets returning 7.6% in annual income." John provides no record citation to support this statement. Similarly, in John's reply brief, he references "the $171,000 in annual income that Carol is now receiving from her inheritance" and cites to a page in the record and a page in his appendix as support. The two pages to which John cites are actually the same page of transcript and nowhere on that page is there any mention of Carol receiving $171,000 annually from the trust. There is simply no proof in the record that Carol has received any income from her inheritance. As a result, we find that John failed to meet his burden to prove a substantial change in circumstances occurred. The trial court properly denied John's petition to modify or terminate maintenance and we affirm its decision.

¶ 44 CONCLUSION

¶ 45 Based on the foregoing, we find that the circuit court's decision denying John's petition to modify or terminate maintenance was not an abuse of discretion.

¶ 46 Affirmed.