

2018 IL App (2d) 180257-U
No. 2-18-0257
Order filed November 19, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
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| <i>In re</i> MARRIAGE OF JASON P. SWANSON, |) | Appeal from the Circuit Court of DeKalb County. |
| |) | |
| Petitioner-Appellant, |) | |
| |) | |
| and |) | No. 16-D-197 |
| |) | |
| MELINDA M. SWANSON, |) | Honorable |
| |) | Marcy L. Buick, |
| Respondent-Appellee. |) | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The award of maintenance in favor of the respondent was affirmed where the trial court's factual findings were not against the manifest weight of the evidence and the court properly calculated the parties' incomes.
- ¶ 2 Following a trial in the circuit court of DeKalb County, the court entered a judgment dissolving the marriage of Jason P. Swanson and Melinda M. Swanson. On appeal, Jason argues that the court erroneously ordered him to pay maintenance, as Melinda was able to support herself and was cohabiting with a new paramour. Jason alternatively claims that the court incorrectly calculated the maintenance award. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Jason and Melinda married in 2009. They have no children together but Melinda has two children from a prior relationship. Jason is a police officer and Melinda is unemployed.

¶ 5 In August 2016, Jason petitioned for legal separation. Two months later, Melinda filed a counterpetition for dissolution of marriage. Pursuant to the agreement of the parties, in November 2016, the court ordered Jason to pay Melinda temporary maintenance in the amount of \$538 per month, subject to deductions to account for certain bills that he was paying.

¶ 6 In February 2017, Jason filed a petition seeking visitation with Melinda's children.¹ In March 2017, he filed a notice of intent to claim dissipation. In April 2017, he filed a "motion to terminate maintenance" on the basis that Melinda was cohabiting on a resident, continuing, and conjugal basis with a man named Benjamin McClatchey (Ben), who lived in St. Louis, Missouri. Trial commenced on May 23, 2017, and continued on June 13, August 15, and November 15. The record does not contain a transcript of the June 13 proceedings.

¶ 7

A. Trial Evidence

¶ 8

1. *Melinda's Testimony*

¶ 9 Melinda testified in her own case-in-chief and again as a rebuttal witness. The record contains the entire transcript of her rebuttal testimony. However, with respect to her testimony in her case-in-chief, the record includes only her direct examination and part of her cross-examination.

¶ 10 Melinda testified that she was 41 years old and Jason was 43. They had not shared a household since July 2016. After she moved out of the marital residence with her children, she rented an apartment in DeKalb, Illinois before moving to St. Charles, Illinois. She had a history

¹ Jason ultimately withdrew that petition in March 2018.

of mental illness that required treatment since she was 18 years old. She also described experiencing migraines and loss of consciousness due to low blood pressure. She relied on a pacemaker.

¶ 11 Melinda explained that she had been unemployed since February 2012, when she was fired from her position as an assistant manager of an apartment complex due to excessive health-related absences. After she lost her job, she applied for and eventually was awarded Social Security disability benefits in the amount of \$1588 per month. She also received benefits through the Supplemental Nutrition Assistance Program. Due to her medical issues, she did not see herself returning to gainful employment.

¶ 12 Melinda testified that she had been friends with Ben for 23 years. She saw him in August and September 2016 at a hotel in St. Charles. He stayed overnight at her apartment in October 2016. When she traveled to St. Louis in February 2017, however, she did not stay with Ben even though he had an apartment there. The purpose of the trip to St. Louis was to get license plates for Ben's car, which he had been allowing her to use free of charge since November 2016. Ben paid for the insurance on that car, and Melinda was listed on the policy as one of the permissive drivers. Her parents fronted the \$750 cost of her trip to St. Louis and Ben repaid them.

¶ 13 Melinda was shown a list reflecting certain of her expenses which were the subject of Jason's dissipation claim. That exhibit is not included in the record on appeal. Melinda justified her expenses—most of which related to things such as gas, coffee, phone bills, rent, and utilities. She also identified a few charges that she incurred for Ben for which she was subsequently reimbursed by him.

¶ 14 Melinda was questioned about a business that she apparently was starting. She said that she had a Facebook page but that this endeavor was more of a hobby than a business. She had spent only one hour on it.

¶ 15 *2. Jason's Testimony*

¶ 16 The only portion of Jason's testimony that is included in the record is his re-direct examination by his own counsel. Much of this testimony is devoid of context in the absence of a transcript of his direct and cross-examination.

¶ 17 Jason primarily discussed Melinda's relationship with Ben after the parties' separation. Jason explained how he learned that Melinda on occasion shared a hotel room or a weekend at her apartment with Ben. Presumably attempting to show that Melinda had sexual relations with Ben, Jason explained his suspicions that she conducted internet searches about ectopic pregnancies. (In her rebuttal testimony, Melinda claimed that she searched those particular terms because her friend was experiencing symptoms.) From a question asked of Jason, it seems that, in a portion of Melinda's testimony that is not in the record, she acknowledged having told Jason at some point that she had a sexual relationship with Ben. She apparently claimed on the stand, however, that she only said this to get Jason to leave her alone.

¶ 18 *3. Ben's Deposition Testimony*

¶ 19 Jason's counsel encountered problems procuring Ben's presence at trial. The court admitted into evidence the transcript of a deposition that Ben provided in his home state of Missouri.

¶ 20 Ben testified that he had a close friendship with Melinda, whom he had known for 24 years. He spent time with her in Illinois on five or six occasions in the past year. Prior to that, the last time he saw her was twenty-two years ago. He talked to her on the phone most days and

their conversations lasted twenty minutes to a couple of hours. Melinda had never talked to him about moving to St. Louis.

¶ 21 Ben denied anything beyond a friendship with Melinda and he described the mundane things that they did when they saw each other. On the few occasions when they stayed overnight in the same room, they did not sleep in the same bed and they never engaged in sexual relations. When he and Melinda got food, her children were usually present and he always paid. At the time of his deposition in October 2017, he had not been to Illinois to see Melinda since March.

¶ 22 Ben testified that Melinda once traveled to St. Louis to get license plates for one of his cars as a favor to him. He reimbursed Melinda's mother \$750 in connection with that trip. He purchased that car in November 2016 and Melinda had been in possession of it since then. He did not put any restrictions on Melinda's use of the car, and he indicated to her that she could use it until he needed it back. He paid for the car insurance and Melinda was one of three authorized drivers on the policy. On one or two occasions, he sent her \$500 or \$600 in total for the upkeep of his car.

¶ 23 Other than the expenses related to this car and paying for food when they got together, Ben said that he did not assist Melinda with any of her bills and that she did not assist him with his. They had not bought each other gifts in the last two years. He lent her money to retain a divorce attorney and she paid him back within a few months.

¶ 24 B. Judgment for Dissolution of Marriage

¶ 25 On January 19, 2018, the court entered a judgment for dissolution of marriage (JDOM). Only the provisions relating to maintenance are at issue on appeal. The court found that Melinda received Social Security disability income in the amount of \$19,056 per year, while Jason's 2017 gross income was \$60,720.40. The court determined that Melinda was in need of maintenance,

as she was disabled, had not been employed since 2012, and had ongoing physical and mental health issues. According to the court, Melinda likely was not employable. Jason, on the other hand, was employed, had many working years ahead of him, and had no health concerns.

¶ 26 The court rejected Jason's dissipation claim. The court also rejected his argument that Melinda was cohabiting with Ben on a resident, continuing, and conjugal basis. The court reasoned that, although Melinda and Ben spoke frequently on the phone, they lived in different states, they saw each other in Illinois on only six occasions, they did not comingle finances, they did not take vacations together, and she never visited his residence.

¶ 27 The court awarded Melinda maintenance in the amount of \$12,854.92 per year (\$1,071.24 per month) for 36 months. To ascertain Jason's income for purposes of the statutory maintenance computations, the court relied on Melinda's trial exhibit 4, which was Jason's paystub for the period ending on April 22, 2017. The court found that the year-to-date income on this paystub reflected 16 weeks of Jason's pay, and the court extrapolated his annual income accordingly. The paystub is not in the record.

¶ 28 C. Jason's Motion to Reconsider and Clarify

¶ 29 On February 15, 2018, Jason filed a motion to reconsider and clarify the JDOM. We will detail only those aspects of his arguments which are relevant to this appeal. Jason argued that his gross annual income was \$53,973.92, not \$60,720.40. He maintained that the court erroneously interpreted the year-to-date income on his April 2017 paystub as reflecting 16 weeks of pay rather than 18 weeks. According to Jason, this accounted for the difference between his figures and the court's figures.

¶ 30 Jason also disagreed with the court's calculation of Melinda's income. He asked the court to include as income the following "gifts" that Melinda had received since the separation:

- The car. Claiming that the cost of the car was \$2995, and noting that Melinda had the benefit of the car since November 2016, Jason urged that “[t]he value of the car and the lack of car payment adds at least \$3,100[.]00 to her yearly income.”
- Ben’s payment of her car insurance. Although Jason conceded that the value of this gift was not in evidence, he proposed that it was “reasonable to assume that Ben pay [sic] \$180.00 per month in car insurance times 12 months per year increases Melinda’s yearly income by \$2,160.00.”
- The \$500 or \$600 that Ben gave her for the upkeep of the car. Jason assumed that these gifts would continue, so he divided \$600 by 10 (the number of months that Melinda had the car). Jason’s calculation yielded an additional \$60 per month to her annual income.
- The \$750 registration fee that Ben paid for the car.
- \$334 in checks from her mother between July 2016 and December 2016 that she purportedly failed to demonstrate were repaid. Noting that these checks were received over a six month period, Jason proposed that this added \$55.67 per month to Melinda’s yearly income.

Inclusive of the value of these gifts, Jason insisted that Melinda’s yearly income for purposes of calculating maintenance was actually \$27,798.04, not \$19,056. Taking the position that his annual income was \$53,973.92 and that Melinda’s income was \$27,798.04, Jason calculated his guideline maintenance obligation at \$409 per month.

¶ 31 Melinda did not file a written response to Jason’s motion but she opposed it in open court on February 26, 2018. She contended that the court properly calculated Jason’s income based on 16 weeks of pay, as reflected on his paystub. She also argued that the court properly calculated

her own income, as there was no evidence of the value of her use of Ben's car. At any rate, she maintained, the use of the car did not necessarily enhance her wealth or increase her ability to support her children. Thus, there was "no real income" which the court could impute to her for purposes of determining maintenance. The court continued the matter to March 9 for ruling.

¶ 32 On March 9, 2018, the court denied Jason's motion to reconsider and clarify the JDOM. The court explained that it reviewed Jason's April 2017 paystub and re-ran the calculations. Upon doing so, the court decided to "re-affirm" its ruling that Jason's gross income was \$60,720.40. With respect to Melinda's income, the court found that the "limited assistance" that Ben provided by letting her use his car did "not add to her wealth." Instead, it was a favor from a friend, as Melinda could not afford to buy or maintain her own car or pay her own insurance. According to the court, "the use of a vehicle is a necessity of life and it's a limited financial assistance to her that is not a continuous income." The court made similar findings with respect to the limited financial assistance that Melinda got from her parents for the "necessities of life."

¶ 33 D. Jason's Notices of Appeal

¶ 34 On April 4, 2018, Jason filed a notice of appeal from the March 9 order denying his motion to reconsider and clarify the JDOM. That appeal was docketed in this court as No. 18-0257. When Jason filed that notice of appeal, Melinda's petition for contribution toward attorney fees was pending in the trial court. Melinda thereafter filed another petition in the trial court seeking contribution toward her prospective attorney fees in connection with the appeal in case No. 18-0257. On June 1, the trial court entered an order requiring Jason to contribute toward Melinda's fees. Sometime thereafter (Jason says in his brief that it was June 29), he filed a motion to reconsider the June 1 order.

¶ 35 On July 10, 2018, Jason filed his appellant’s brief in connection with appeal No. 18-0257. Although he acknowledged that the trial court had not yet ruled on his motion to reconsider the contribution order, he purported to challenge that contribution order in section III of his brief. Melinda moved to strike section III of Jason’s brief. On August 14, a panel of this court granted Melinda’s motion.

¶ 36 Meanwhile, on July 27, 2018, the trial court denied Jason’s motion to reconsider the award of contribution. On August 24, 2018, Jason filed a notice of appeal from the June and July orders relating to contribution. That second appeal was docketed in this court as No. 18-0695.

¶ 37 The parties have not asked us to consolidate the two appeals. Appeal No. 18-0257 was also fully briefed before the record was filed in appeal No. 18-0695. Accordingly, the appeals have not been consolidated and the present appeal relates only to Jason’s maintenance obligation.

¶ 38 II. ANALYSIS

¶ 39 Jason argues that Melinda was not entitled to maintenance, as she had sufficient means of supporting herself and she was cohabiting with Ben. Jason alternatively contends that the court attributed too much income to him and too little income to Melinda. We will consider Jason’s second argument first, as the accuracy of the court’s income calculations affects whether the circumstances justified a maintenance award. See *e.g.* 750 ILCS 5/504(a)(1) (West 2016) (one of the factors to consider in determining whether an award of maintenance is appropriate is “the income and property of each party”).

¶ 40 At the outset, we reiterate that the record does not contain a complete transcript of the trial proceedings. Nor do we have all of the trial exhibits. As our supreme court has held:

“an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

As explained below, Jason’s failure to provide a complete record makes it impossible for us to review his contention that the court improperly calculated his income. The insufficiency of the record similarly prevents us from addressing aspects of Jason’s arguments relating to the calculation of Melinda’s income. With respect to the remaining issues and arguments, the trial court’s rulings were amply supported by the evidence contained in the portions of the record that we have. We presume that any missing transcripts and exhibits likewise would have supported the maintenance order.

¶ 41 A. Calculation of the Parties’ Incomes

¶ 42 The court determined that Jason’s gross annual income was \$60,720.40 and that Melinda’s was \$19,056. Citing nothing but his motion to reconsider and clarify the JDOM, Jason asserts that his income was actually \$53,973.92, whereas Melinda’s was \$27,798.04.

¶ 43 There are two problems with Jason’s challenge to the court’s calculation of his own income. The first is that Jason forfeited his argument by failing to present a cogent analysis of the issue. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (the appellant’s brief must present an “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.”). Jason makes no attempt in his brief to explain why the court improperly calculated his income. “Mere contentions, without

argument or citation to authority, do not merit consideration on appeal.” *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12.

¶ 44 Even were we to overlook the forfeiture and assume that Jason means to reassert the points that he made in his motion to reconsider and clarify the JDOM, he runs into a second problem. The record reflects that the difference between the court’s calculations and Jason’s calculations was due to a dispute between the parties as to how many weeks of pay were reflected on Jason’s April 2017 paystub. That paystub is not included in the record on appeal, so we have no way of evaluating the merits of Jason’s position. Accordingly, in addition to the forfeiture of the argument, we must presume that the court’s calculation of Jason’s income “was in conformity with law and had a sufficient factual basis.” *Foutch*, 99 Ill. 2d at 392.

¶ 45 With respect to Melinda’s income, Jason argues that the court failed to consider “the ongoing gifts” that she received from her mother and Ben.

¶ 46 For purposes of determining an award of maintenance, “ ‘gross income’ means all income from all sources, within the scope of that phrase in Section 505 of [the Illinois Marriage and Dissolution of Marriage Act (Act)].” 750 ILCS 5/504(b-3) (West 2016). In turn, section 5/505(a)(3)(a) of the Act, which relates to child support, defines “gross income” as “the total of all income from all sources,” subject to exceptions that are not relevant here. Pub. Act 99-764 (eff. July 1, 2017) (amending 750 ILCS 5/505(a)(3)(a) (West 2016)). When fashioning an award of maintenance, the circumstances of the case may justify or even require consideration of the value of gifts that a spouse has received. See *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶¶ 35, 37 (the trial court properly deviated downward from the statutory guidelines with respect to the duration of a maintenance obligation where the evidence showed that the payee-wife received substantial financial assistance from her parents after the parties separated); *In re*

Marriage of Ruvola, 2017 IL App (2d) 160737, ¶ 20 (the trial court erred in failing to include as part of the payor-wife's income the \$13,260 in gifts that she received from her father each year). We review *de novo* the issue of "whether an item constitutes income for purposes of maintenance." *Ruvola*, 2017 IL App (2d) 160737, ¶ 18.

¶ 47 The evidence showed that Ben allowed Melinda to use one of his cars for an extended period of time, with the expectation that she would return it when he needed it. Ben paid for the car insurance and Melinda was one of the authorized drivers on the policy. Ben also sent Melinda \$500 or \$600 for the maintenance of his car, and he repaid her parents \$750 to have it licensed in Missouri.

¶ 48 Melinda may have derived some benefit from Ben making his car available to her. Nevertheless, as the trial court noted, it is questionable whether this "gift" actually enhanced Melinda's wealth in the way that our supreme court envisioned when that court first recognized that gifts may constitute income. See *In Re Marriage of Rogers*, 213 Ill. 2d 129, 137 (2004) (in the course of determining that certain cash gifts received by a payor-father were part of his income for purposes of setting his child support obligation, the court reasoned that the gifts "represented a valuable benefit to the father that enhanced his wealth and facilitated his ability to support [his son].").

¶ 49 Assuming that the temporary permissive use of a car is the type of gift that could be considered income for purposes of setting a maintenance obligation, there was no evidence introduced at trial which would have allowed the court to value that gift. Here is what Jason argued before the trial court with respect to the car in his motion to reconsider and clarify the JDOM:

“Melinda received a motor vehicle as a gift. The cost of the motor vehicle was \$2,995.00. Melinda has had the benefit of the car from November 2016. The value of the car and the lack of car payment adds at least \$3,100[.]00 to her yearly income.”

Jason’s math and logic are immediately suspect inasmuch as he attempted to impute to Melinda more income than the car was even worth.² Moreover, contrary to what Jason asserted, Ben did not simply give Melinda the car as a gift; the gift here was the permissive use of the car over a period of months. Accordingly, the fact that Ben apparently paid \$2995 for this car does not tell us anything in and of itself about the value of the gift. Jason’s attempts to add to Melinda’s income the costs of maintaining and licensing the car were misguided for the same reasons. Furthermore, Jason conceded in his motion to reconsider and clarify the JDOM that he failed to introduce evidence at trial showing how much Ben paid to insure the car. Jason thus provided no evidence, expert or otherwise, which would have allowed the court to reliably value Melinda’s permissive-use interest in the car. Lacking an evidentiary basis to ascertain the value of Melinda’s use of the car, the court properly declined to include that value in Melinda’s gross income.

¶ 50 Jason also asserts, without elaboration, that Melinda received checks from her mother. Looking back to his motion to reconsider and clarify the JDOM, we assume that Jason is referring to three checks totaling \$334 that he claimed Melinda was unable to prove she repaid.

² Jason did the same thing for some of the other supposed gifts. For example, insisting that Melinda failed to account for \$334 in checks that she received from her mother over a period of six months, Jason attempted to add \$668.04 to her annual income. For the \$500 or \$600 that Ben sent Melinda for the upkeep of the car over a period of 10 months, Jason attempted to add \$720 to her annual income.

One of those checks was dated December 18, 2016, and was in the amount of \$144. Melinda testified unequivocally that she reimbursed her mother for that loan. With respect to the other two checks, as noted above, the record does not include a complete transcript of Melinda's testimony. We have no way of knowing whether she accounted for the disputed funds. For these reasons, we presume that the court's failure to include these checks in Melinda's gross income "was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392.

¶ 51 Jason further complains that "[t]he court's calculation of maintenance did not show where its figure of \$12,854.92 was derived from." That argument is baseless, as the JDOM detailed the court's computations. Jason concludes this section of his brief with a rambling paragraph lamenting the unfairness of discriminating against an individual for paying taxes. Whatever point Jason is trying to make here is forfeited for failure to present a cogent legal argument supported by pertinent authority. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 52 B. Propriety of the Maintenance Award

¶ 53 Jason also argues that the court erroneously awarded Melinda maintenance. Specifically, he contends that she was not in need of maintenance and that she was cohabiting with Ben on a resident, continuing, and conjugal basis.

¶ 54 1. *Melinda's Need for Maintenance*

¶ 55 According to Jason, Melinda "possesses sufficient property to provide for her own reasonable needs[,] *** is able to support herself through appropriate employment[,] and is not without sufficient income." Citing only his motion to reconsider and clarify the JDOM, he proposes that his income was \$53,973.92 and that Melinda's was \$27,798.04. Again citing only his own motion, he asserts that "[t]he record shows that Melinda's financial needs are being met

through her current income and gifts from her parents and Ben.” Jason emphasizes that Melinda receives disability checks and sells jewelry online. He suggests that “[a]ny impairments or disabilities Melinda currently has have not prevented her from operating a motor vehicle or engaging in a sales job.” Furthermore, once again citing nothing but his own motion, Jason says that “[t]he record also shows a pattern of financial exploitation by Melinda of the biological father of her children, Jason, and Ben.” Finally, Jason suggests that the maintenance award of \$1,071.24 per month imposes a financial hardship on him and provides Melinda with more income than she needs.

¶ 56 Jason’s citation of his own pleadings rather than the trial evidence to establish what “the record shows” is inappropriate and concerning. Although we will address Jason’s arguments on the merits, we admonish his counsel that citing his client’s pleadings is an unacceptable substitute for citing and discussing actual evidence when raising a challenge to the trial court’s factual findings.

¶ 57 Section 504 of the Act governs maintenance. 750 ILCS 5/504 (West 2016). The court must first determine whether an award of maintenance is appropriate in light of 14 specified factors. 750 ILCS 5/504(a)(1-14) (West 2016). If the circumstances warrant an award of maintenance, the statute sets guidelines for the amount and duration of the award. 750 ILCS 5/504(b-1) (West 2016). Generally, “[t]he amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it is an abuse of discretion.” *Brill*, 2017 IL App (2d) 160604, ¶ 26. An abuse of discretion occurs only where the court’s findings were arbitrary or fanciful or where no reasonable person would agree with the court’s position. *Brill*, 2017 IL App (2d) 160604, ¶ 26. However, to the extent an appellant challenges the factual findings underlying the maintenance order, we will not disturb those

findings unless they were against the manifest weight of the evidence. *Brill*, 2017 IL App (2d) 160604, ¶ 30. A finding of fact is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, or not based on the evidence presented. *Brill*, 2017 IL App (2d) 160604, ¶ 30.

¶ 58 From the record that we have, it is clear that the court's factual findings were not against the manifest weight of the evidence and that the award of maintenance was not an abuse of discretion. We have already rejected Jason's claim that the court improperly calculated the parties' respective incomes. Moreover, contrary to what Jason argues, the evidence did not show that Melinda's financial needs were adequately met by her disability income and gifts. To the extent that she received any gifts, such as the use of a car or a few hundred dollars here and there from her parents, it is important to remember that she received that assistance while Jason was paying her temporary maintenance in an amount that was half of what the trial court ultimately determined she needed. It is disingenuous for Jason to suggest that Melinda had adequate means of supporting herself when she was relying on food stamps.

¶ 59 The evidence also supported the court's conclusion that Melinda was likely unable to work. She had a long history of physical and mental health concerns and she had been out of the workforce since 2012. Although she was capable of driving, Melinda explained at trial why she could not maintain employment. As for her alleged online business, the testimony showed that she spent a total of one hour on that endeavor and that it was more of a hobby than a business. Moreover, it is not apparent what Jason means when he complains about being financially exploited by Melinda. There was no evidence of that. Jason's assertion that the maintenance obligation poses an undue burden on him is unpersuasive, given that he is healthy, he has stable employment, and his obligation is limited to 36 months.

¶ 60

2. *De Facto Marriage*

¶ 61 Jason finally argues that Melinda cohabited with Ben on a resident, continuing, and conjugal basis.

¶ 62 The obligation to pay maintenance terminates if the recipient spouse “cohabits with another person on a resident, continuing conjugal basis.” 750 ILCS 5/510(c) (West 2016). Cohabitation may serve as a basis for terminating an existing maintenance obligation or it may justify declining to award maintenance in the first instance. See *In re Marriage of Klein*, 231 Ill. App. 3d 901, 905 (1992). The rationale for the rule is that it would be inequitable for a person to receive maintenance while he or she is involved in an effectively marital, though legally unrecognized, relationship with a new paramour. See *In re Marriage of Herrin*, 262 Ill. App. 3d 573, 577 (1994). In other words, courts should not treat a *de facto* remarriage any differently than a *de jure* remarriage. *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 40. The spouse who seeks to avoid paying maintenance bears the burden of showing that the recipient spouse is involved in a *de facto* marriage. *Miller*, 2015 IL App (2d) 140530, ¶ 40. We will not reverse the trial court’s ruling as to the existence or nonexistence of a *de facto* marriage unless it is against the manifest weight of the evidence. *Miller*, 2015 IL App (2d) 140530, ¶ 40.

¶ 63 In *Miller*, we recognized that courts have considered the following nonexhaustive list of factors in determining whether a *de facto* marriage exists: “(1) the length of the relationship; (2) the amount of time spent together; (3) the nature of activities engaged in; (4) the interrelation of personal affairs (including finances); (5) whether they vacation together; and (6) whether they spend holidays together.” *Miller*, 2015 IL App (2d) 140530, ¶ 40. We cautioned, however, that these factors “are not a checklist.” *Miller*, 2015 IL App (2d) 140530, ¶ 46. Courts instead must distinguish between *de facto* marriages and mere intimate dating relationships by viewing the

totality of the circumstances and “look[ing] for signs of mutual commitment and permanence.” *Miller*, 2015 IL App (2d) 140530, ¶ 50. Specifically, courts should “determine whether the new relationship functions practically and economically in a marriage-like way and, if not, whether there is a reasonable explanation as to why it does not (such as each partner’s having an individual abundance of resources or estate-planning goals).” *Miller*, 2015 IL App (2d) 140530, ¶ 50.

¶ 64 The finding that Melinda and Ben were not engaged in a *de facto* marriage was not against the manifest weight of the evidence. In fact, the issue was not even close. Both Melinda and Ben testified that they were friends. Although Jason related his suspicions that Melinda and Ben at some point had a sexual relationship, this merely presented a question of credibility for the trial court to resolve. See *Miller*, 2015 IL App (2d) 140530, ¶ 41 (“As a general rule, we will not disturb a trial court’s credibility determinations.”). Even if Melinda had a sexual relationship with Ben, that would not absolve Jason of his duty to pay maintenance. The evidence showed that Melinda and Ben spoke frequently on the phone. However, they met in person only a handful of times in late 2016 and early 2017. There was no evidence that they took vacations together, comingled their finances, or discussed the prospect of marriage. They also lived in different states and Melinda never visited Ben’s home. By the time Ben sat for his deposition, he apparently had not seen Melinda in seven months. Under these circumstances, there were no signs of mutual commitment and permanence that would indicate a *de facto* marriage relationship.

¶ 65

III. CONCLUSION

¶ 66 For the reasons stated, we affirm the judgment of the circuit court of DeKalb County.

¶ 67 Affirmed.