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2018 IL App (3d) 170636-U

Order filed September 13, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
THOMAS LEDERER,)	Will County, Illinois.
)	
Petitioner-Appellee,)	Appeal No. 3-17-0636
)	Circuit No. 12-D-2119
and)	
)	
JANET LEDERER,)	The Honorable
)	David Garcia
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's order terminating ex-wife's maintenance was not against the manifest weight of the evidence where relevant factors weighed in favor of trial court's finding that ex-wife was cohabiting with her boyfriend.

¶ 2 In August 2014, the trial court entered a judgment for dissolution of marriage, dissolving the 25-year marriage of Thomas Lederer and Janet Lederer. The judgment required Thomas to pay Janet maintenance of \$700 per week for six years unless she remarried or lived with another

person on a “conjugal basis.” In December 2016, Thomas filed a petition to terminate maintenance, alleging that Janet was living with her boyfriend. Following a hearing, the trial court granted Thomas’ petition, terminating Janet’s maintenance retroactive to the filing of Thomas’ petition. Janet appeals, arguing that the trial court’s order is against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

Thomas Lederer and Janet Lederer married in August 1989. In October 2012, Thomas filed a petition for dissolution of marriage. Thomas and Janet have one child together, Amanda Lederer, who was 20 years old when the petition was filed. Janet also has an adult son from a prior relationship, Jamie Belzek.

¶ 5

In August 2014, the trial court entered a judgment for dissolution. The judgment required Thomas to pay Janet maintenance of \$700 per week for six years. The judgment further provided: “Maintenance may be modified pursuant to 750 ILCS 5/510 (a-5), and ‘is terminated upon the death of either party, the remarriage or union of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis’ pursuant to 750 ILCS 5/510(c).”

¶ 6

On December 16, 2016, Thomas filed a petition to terminate maintenance, alleging that Janet was cohabiting with her boyfriend, Scott Langer. In July and August 2017, a hearing was held on the petition.

¶ 7

Amanda Lederer testified that she lives in a three-bedroom townhouse at 23240 Chipper Court in Plainfield with her mother, Janet, and her half-brother, Jamie Belzek. Before moving into the townhouse, Amanda lived with Janet in the marital home until February 2016. Janet

moved all of her personal effects and furniture from the marital home to the townhouse, where they have continuously remained.

¶ 8 According to Amanda, Janet has consistently lived at the townhouse in Plainfield. Scott Langer, Janet's boyfriend, has never lived there. Scott lives in Michigan and Florida. Scott has spent the night in the Plainfield townhouse one or two times. He does not have keys to the townhouse.

¶ 9 When Scott moved into a new home in Florida, he allowed Amanda to decorate one of the bedrooms with new bedding and paint. Amanda visited Scott's home in Florida twice in 2016. She stayed there with Janet for about three weeks in November and December 2016. Janet slept in Amanda's room during most of that stay. Amanda visited Scott's home in Michigan twice in 2017 for a weekend or extended weekend.

¶ 10 Amanda stays in Plainfield approximately five days a week. For the last year, Amanda estimated that Janet stays at the Plainfield townhouse "three or four nights a week." When she is not there, she is with Scott in Michigan or Florida. Amanda testified that the longest Janet has ever been away from Plainfield at one time is three weeks. When Janet goes on extended trips, she is either with Scott or at her parents' house in Michigan. This past summer, Janet has been spending a lot of time with her parents in Michigan because they are in poor health.

¶ 11 When Janet stays with Scott in Michigan, she usually stays for a weekend. Janet does not have any clothes at Scott's home in Michigan. Janet and Scott began dating "a little bit after" Thomas and Janet's divorce. Janet and Scott were friends before that as far as Amanda knows. Scott gave Amanda access to a credit card to use in case of emergencies. Amanda used the card a couple of times for gas and food shortly after Scott gave it to her and has not used it since. The card is now expired.

¶ 12 Jamie Belzek testified that he lives with his mother and Amanda at the townhouse at 23240 Chipper Court in Plainfield. He has lived with Janet consistently for the past two and-a-half to three years. He and Janet are on the lease. They split the expenses and the rent. All of Janet's personal effects and household items are in the townhouse in Plainfield.

¶ 13 Jamie testified that Janet stays in Plainfield for two to three weeks at a time and then visits Scott for a few days in Florida or Michigan, depending where he is. She takes clothes with her when she goes. Janet has no furniture at Scott's house in Michigan or his house in Florida. Jamie stays at the townhouse four to five nights a week and estimated that Amanda does the same. Jamie testified that Janet has never been away from the townhouse in Plainfield for more than two weeks at a time.

¶ 14 In January, Jamie went to Disney World with his son, Amanda, Janet, Scott and Scott's parents for four days. Scott's parents accompanied them because they work at Disney World and were able to get everyone in free. During the vacation, Scott and his parents slept in one cabin, and Janet and her family slept in another.

¶ 15 Scott Langer testified that he is a resident of Florida but owns a business in Michigan. In Michigan, he stays at a home his parents own on a lake. Janet has never moved any personal effects or furniture to the house in Michigan or to his house in Florida.

¶ 16 Scott is in a dating relationship with Janet but explained it is not a typical relationship because Janet lives in Illinois, and he lives in Michigan and Florida. He and Janet are exclusively dating each other. They have spent most holidays together since Janet's divorce. He has not discussed marriage with Janet or proposed to her because she lives in Illinois and has no intention of moving because her children and grandchildren are there.

¶ 17 Scott purchased his home in Port Orange, Florida in 2014. It is in his name alone. Janet has never given him money to pay expenses at that home or at his parents' home in Michigan.

¶ 18 Scott has been friends with Janet for many years. They became more than friends approximately six months after her divorce. He loaned Janet \$4,000 to \$5,000 to help her with a down payment on the Plainfield townhouse soon after her divorce. Janet paid him back. He gave Janet and Amanda access to one of his credit cards shortly after the divorce to use in case of an emergency. He thought Janet might have used it once for gas soon after he gave it to her. That credit card has since expired.

¶ 19 Scott lives in Florida from November to March but is only at his house about half of that time. The rest of the time, he travels to visit family members. Scott testified that Janet is with him in Florida no more than half of the time he is there. He shares no expenses with Janet, and she is not listed on any of his accounts.

¶ 20 He does not pay Janet's car payment but was with her when she purchased her car, a 2017 Mustang, in Florida. The car is registered in Florida with his address. Scott added Janet to his car insurance policy for six months because she did not have a car or insurance of her own. Before she purchased the Mustang, Janet used one of Scott's vehicles to get around. He often loans his vehicles to family and friends.

¶ 21 Janet typically only spends weekends with Scott in Michigan. She does not generally stay with him there during the week. When he is in Michigan, he works seven days a week. He rarely visits Janet in Illinois because he is busy working.

¶ 22 Janet testified that she lives in Plainfield but visits Scott in Florida and Michigan, as well as her parents in Michigan. Her parents live about three and-a-half hours from Scott's home in Michigan. She does not pay for any bills or expenses at either of Scott's homes.

¶ 23 Janet purchased a Mustang in Florida in November 2016. In order to obtain financing for that vehicle, she had to fill out an application. On the application, Scott's Florida address is listed as her address. Janet signed the application. She said she wanted to use her own address in Plainfield and gave that address to the dealership employees, but they told her they needed a Florida address for the vehicle's registration. At the time of the hearing, the car still had Florida license plates and was still registered at Scott's address in Florida. The bill of sale for the vehicle also listed Scott's Florida address.

¶ 24 Based on her credit card statements, Janet agreed that she was in Florida from January 7, 2015 to February 6 or 7, 2015; February 18, 2015 to April 13, 2015; November 8, 2016 to December 19, 2016; January 3, 2017 to February 8, 2017; and March 17, 2017 to the first week of April 2007. She disagreed that she spends more time away from her home in Plainfield than she does at home. She explained that when she leaves Plainfield, she does so for three or four days and is usually home for four to six weeks at a time before and after that. She spent three weeks in a row at her home in Plainfield right before the hearing. She was unable to identify any other period of time when she spent three or more weeks straight at her Plainfield home.

¶ 25 Janet has health insurance with Blue Cross Blue Shield Community out of the state of Illinois. Scott does not help her pay for health insurance. She did not help furnish Scott's Florida home. She has created Facebook posts referring to Scott's house in Florida as "our house." She said that is just something she says, but the house is not hers. It is Scott's.

¶ 26 Janet and Amanda have cell phones through Scott's business. They both pay Scott \$50 per month in cash for the phone bill. She does not share any bank accounts with Scott. She repaid him for the money he loaned her for a down payment on her townhouse. She also repaid him for her car insurance. She has paid back Scott for all of the loans he made to her. Janet's Plainfield

address is listed on all of her bank and credit card accounts. She explained: “That is my house. That’s where I live.”

¶ 27 Janet does not do laundry for Scott, clean his house or cut his lawn. She has never had a joint bank account with Scott or deposited money into any of his accounts. She does not have keys to Scott’s home in Florida or his parents’ home in Michigan. She has not discussed making her relationship with Scott permanent and has never held herself out as Scott’s wife. She has not assigned Scott as her power of attorney or named him in her will.

¶ 28 Following the hearing, the trial court discussed the credibility of the witnesses, finding that both Jamie and Scott had “no credibility.” The court also questioned Janet’s credibility because Scott’s Florida address was listed on her vehicle’s registration and her financing application. After analyzing the relevant factors, the court entered an order granting Thomas’ petition to terminate maintenance. The termination was retroactive to the filing date of the petition, December 16, 2016, requiring Janet to repay Thomas for 35 weeks of maintenance, totaling \$24,500. The trial court entered judgment in favor of Thomas and against Janet for \$24,500.

¶ 29 ANALYSIS

¶ 30 Section 510(c) of the Marriage and Dissolution of Marriage Act (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 2016). The purpose of section 510(c) is not to control public morals. *In re Marriage of Bramson*, 83 Ill. App. 3d 657, 663 (1980). Rather, “[t]he rationale behind termination of maintenance when resident, continuing, conjugal cohabitation exists is the inequity created when the ex-spouse receiving maintenance becomes involved in a husband-and-wife relationship but does not legally

formalize it, with the result that he or she can continue to receive maintenance.” *In re Marriage of Herrin*, 262 Ill. App. 3d 573, 577 (1994). “ ‘Where the relationship has achieved a permanence sufficient for the trial court to conclude that it has become a substitute for marriage, equitable principles warrant a conclusion that the spouse has abandoned his or her rights to support from the prior marriage * * *.’ ” *In re Marriage of Weisbruch*, 304 Ill. App. 3d 99, 105 (1999) (quoting *In re Marriage of Herzog*, 761 S.W. 2d 267, 268 (Mo. Ct. App. 1988)). “[A] receiving spouse who is *de facto* remarried should be treated no differently from a receiving spouse who is *de jure* remarried.” *In re Marriage of Susan*, 367 Ill. App. 3d 926, 937 (2006).

¶ 31 The party seeking the termination of maintenance bears the burden of establishing that the receiving spouse is in a *de facto* marriage. *Id.* at 929. In determining whether the petitioner has met his burden, a court looks to the totality of the circumstances and considers the following nonexhaustive list of factors: (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. *Id.* A court should consider all of the factors; no one factor is controlling. *Id.* at 930.

¶ 32 A reviewing court will not reverse the trial court's ruling on a petition to terminate maintenance based on the existence of a *de facto* marriage unless that ruling is against the manifest weight of the evidence. *Id.* at 929–30. A decision is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the decision is unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010).

¶ 33 Here, the evidence showed that Janet and Scott began dating in early 2015 at the latest. At the time of the hearing, their relationship had lasted over two years. This is a significant amount of time and supports the existence of a *de facto* marriage. See *In re Marriage of Snow*,

322 Ill. App. 3d 953, 956 (2001) (conjugal cohabitation found where couple lived together for one and-a-half years); *Herrin*, 262 Ill. App. 3d at 577-78 (conjugal cohabitation found where relationship lasted about two and-a-half years); *Hall v. Hall*, 25 Ill. App. 3d 524, 526-27 (1975) (conjugal cohabitation found where relationship spanned two years).

¶ 34 Next, we consider the amount of time Scott and Janet spend together. Both of Janet's children testified that Janet never spends more than two or three weeks at a time away from her home in Plainfield. However, that testimony was contradicted by Janet's credit card statements, which showed that as early as January 2015, Janet was staying with Scott in Florida for four or more weeks at a time. While Janet claimed that her typical pattern was to stay in Plainfield for several weeks at a time and then stay with Scott for only a few days, that testimony was not supported by the record. Janet was unable to identify any time period, other than right before the hearing, when she stayed in Plainfield continuously for three weeks or more. Amanda, the only witness the trial court found to be credible, testified that Janet is away from home with Scott about half of the time. Because the evidence showed that Scott and Janet spend approximately half of their time together and half of their time apart, this factor is neutral.

¶ 35 Next, we consider the nature of the activities engaged in by Janet and Scott. Janet testified that she did not perform chores around Scott's house, such as cleaning, laundry or yard work. She also did not help him furnish his house nor did she move any of her furniture or belongings into his house. However, Scott allowed Janet's daughter Amanda to decorate one of the bedrooms in his house as she liked. Additionally, Janet has referred to Scott's house in Florida as "our house" on Facebook on more than one occasion. Because there is evidence on both sides of this issue, this factor is neutral.

¶ 36 Next, we consider the interrelationship of Janet’s and Scott’s personal affairs. Janet and Scott do not have any joint bank accounts together and neither pays any of the other’s household expenses. However, Scott gave both Amanda and Janet access to a credit card that they used a few times for gas and food. Scott also loaned Janet money for a down payment on her Plainfield townhouse. Additionally, Scott allowed Janet to use one of his vehicles for several years and added Janet to his car insurance for six months after she purchased a new vehicle. Finally, Amanda and Janet are both on Scott’s cell phone account. Because there is evidence of intermingling of Janet’s and Scott’s funds, this factor supports a finding that Janet and Scott were engaged in a *de facto* marriage.

¶ 37 Next, we consider whether Scott and Janet vacationed together. There was testimony that Janet, her children and her grandchild went to Disney World with Scott and his parents. However, Janet and Scott slept in two different cabins while on vacation. Therefore, this factor is neutral.

¶ 38 Finally, we consider whether Scott and Janet spend holidays together. Scott testified that he and Janet have spent most holidays together since Janet’s divorce. Janet did not contradict Scott’s testimony. This factor supports a finding of a *de facto* marriage.

¶ 39 After analyzing each of the relevant factors, three factors weigh in favor of finding that a *de facto* marriage existed between Janet and Scott, and three factors are neutral. Because half of the factors weigh in favor of the existence of conjugal cohabitation and none weigh against it, the trial court’s decision to terminate Janet’s maintenance was not against the manifest weight of the evidence.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court of Will County is affirmed.

¶ 42

Affirmed.