

2019 IL App (1st) 173063-U  
No. 1-17-3063  
September 30, 2019

FIRST DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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IN RE THE MARRIAGE OF:	)	Appeal from the Circuit Court
RODD M. SCHREIBER,	)	Of Cook County.
	)	
Petitioner-Counter-Respondent-	)	No. 09 D 8812
Appellant,	)	
	)	The Honorable
v.	)	Debra R. Walker,
	)	Judge, Presiding.
GAY R. SCHREIBER,	)	
	)	
Respondent-Counter-Petitioner-	)	
Appellee,	)	

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Griffin and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1       *Held:* The trial court's finding that Gay needed permanent maintenance to maintain the standard of living she enjoyed during the marriage, and the finding concerning Gay's income and expenses were not contrary to the manifest weight of the evidence. The trial court erred in its final calculation of the maintenance awarded by using an incorrect tax rate.

¶ 2       When Rodd and Gay Schreiber dissolved their marriage in 2011, they agreed that Rodd would pay Gay maintenance of \$21,000 per month for four years, subject to review. Gay

petitioned for review of the maintenance in 2015. The court awarded Gay permanent maintenance of \$23,320 per month. In this appeal, Rodd argues: (1) the court should have terminated maintenance because of Gay's *de facto* remarriage; (2) the court should have barred evidence of the parties' pre-dissolution lifestyle; (3) the court should not have awarded permanent maintenance; (4) the court should have awarded less than \$21,000 per month because of Gay's decreased expenses; and (5) the court allotted too much to Gay for payment of taxes.

¶ 3 We hold that the court's findings of fact are not contrary to the manifest weight of the evidence, and the court did not abuse its discretion in its evidentiary rulings. Based on the court's use of an incorrect tax rate, we remand for recalculation of monthly and retroactive maintenance. Accordingly, we affirm in part, reverse in part, and remand.

¶ 4 I. BACKGROUND

¶ 5 Gay and Rodd Schreiber married in 1987 and had two children: Zachary, born in 1992, and Jennifer, born in 1995. Rodd filed a petition for dissolution of the marriage in 2009. Gay and Rodd signed a Marital Settlement Agreement (MSA), and the circuit court entered a judgment dissolving the marriage in 2011. The court found:

"[The MSA] was entered into freely and voluntarily between the parties. It is not unconscionable and has been approved by this Court. Further, based upon the parties' respective financial positions and the child support provisions in the Agreement, the children will be maintained in the standard of living they would have enjoyed had the marriage not been dissolved."

¶ 6 The court incorporated the MSA into the judgment. According to the MSA,

"in the interest of avoiding additional protracted litigation, the parties consider it to be in their respective best interest to settle \*\*\* the matter of maintenance and support \*\*\*.

\*\*\*

\*\*\* RODD shall pay GAY reviewable, modifiable maintenance in the amount of Twenty-One Thousand Dollars (\$21,000) per month for a period of four (4) years, until July 31, 2015. \*\*\*.

\*\*\*

\*\*\* GAY's reviewable, modifiable maintenance shall terminate on July 31, 2015, unless:

i. GAY files, and gives RODD proper notice of, a petition seeking review of her right to receive further maintenance from RODD, on or by July 31, 2015; and

ii. A Court determines that GAY has a right to receive \*\*\* further maintenance pursuant to the governing law and Sections 504 and 510(a)(5) of the Illinois Marriage and Dissolution of Marriage Act [Act] (750 ILCS 5/504 and 5/510(a)(5))."

¶ 7 Gay filed a timely petition for review of her right to receive maintenance. Rodd filed a motion to bar "all testimony and evidence regarding the parties' pre-judgment income, assets, expenses, and lifestyle," arguing that all such evidence was "not relevant to this proceeding" because "Gay's agreement to the MSA terms regarding her maintenance is *res judicata* as to

whether that maintenance amount was reasonable given Gay's income, expenses and lifestyle at the time the Judgment was entered." The circuit court denied the motion "with respect to the parties' standard of living during the marriage."

¶ 8 Both parties presented evidence of the standard of living Gay and Rodd shared during the marriage, Gay's post-dissolution income and expenses, and Rodd's post-dissolution income. Rodd contended that Gay and Tony Brown effectively cohabited, and therefore the court should terminate Gay's maintenance. Gay and Brown testified about their relationship.

¶ 9 In an order dated June 2017, the trial court found:

"Gay \*\*\* has been in an exclusive dating relationship with Tony Brown \*\*\* for about nine years \*\*\*. They have spent time apart as a result of arguments and fights. They have never lived together. They maintain separate residences. They spend time together, including a couple of nights per week when they are both in Chicago, as well as time apart. As Mr. Brown credibly testified, he is out of town a lot without her, and she is out of town a lot without him. They take some vacations together, but also vacation apart (for example, with their respective children). Sometimes, they split airfares, and sometimes, Mr. Brown pays for airfares. They spend some holidays, but not all holidays, together. Sometimes, they have spent their birthdays together, but not all the time. With respect to activities, they go out for dinner, and go to movies, plays and concerts, like most dating couples. Sometimes, he pays. Sometimes, she pays. Mr. Brown knows some of Gay's friends, and they have socialized with them. Gay knows a couple of Mr. Brown's friends, but they have not socialized with them.

Although Rodd urges that the 'record is replete with their ongoing financial entanglement' \*\*\*, this Court finds little evidence of same. \*\*\* They have professed their love for one another, but they have no plans to marry or make the relationship more permanent. Mr. Brown prefers his independence. There is no evidence of Gay and Mr. Brown providing any financial support, one to the other. There are no estate-planning provisions benefitting one another. They have never split bills or living expenses. They own no joint assets. They have never shared household chores or automobiles. They do not have keys or entry codes to each other's homes. They keep no belongings at each other's homes. Gay is not Mr. Brown's emergency contact on his medical records. They share no club memberships. They have attended no funerals, weddings, class reunions or job parties together. They have not purchased gifts for each other's children or given money to each other's family members. They have no access to each other's laptops or security codes for phones, iPads or email accounts.

Gay is definitely in an intimate long-term dating relationship, but it is not akin to a marriage. Based on all of the above facts and the foregoing analysis of case law, Rodd has failed to sustain his burden of proof that Gay and Mr. Brown are in a *de facto* husband and wife relationship."

¶ 10 The court made specific findings of fact for the factors listed in sections 504 and 510(a)(5) of the Act. The court said:

"This was a long-term marriage, \*\*\* such that indefinite maintenance is an available remedy. \*\*\*

\*\*\*

\*\*\* Gay was employed at the time of the dissolution. Nothing in the [2011 Dissolution] Judgment required her to change occupations in order to become more self-supporting, nor were there findings that she was not using her best efforts to earn income to support herself. Gay has continued to work the same full-time schedule as before Judgment was entered. \*\*\*

\*\*\*

The net assets awarded to Gay under the Judgment were approximately \$4,000,000.

\*\*\* The net assets that Gay presently has are approximately \$4,500,000. The net assets awarded to Rodd under the Judgment were approximately \$4,000,000. The net assets that Rodd presently has are approximately \$14,000,000. Rodd has accumulated significantly more assets and property than Gay since the Judgment was entered, which is to be expected given the sizeable difference in their incomes and Rodd's remarriage to a high net worth spouse.

\*\*\* Gay's gross wages and distributions before deducting retirement plan contributions were \$100,000 in 2014 (no distribution), \$170,240 in 2015 and \$185,000 in 2016. Her gross income, including passive income, capital gains, and K-1 business income, but excluding distributions, was \$253,168, \$233,437 and \$267,679 respectively for 2014, 2015 and 2016. \*\*\*

\*\*\*

\*\*\* The realistic present and future earning capacity of each party based on the historic earnings since the dissolution of marriage shows that Rodd's gross compensation will likely continue to remain in the range of \$4,500,000 to \$5,000,000 per year, while Gay's gross compensation is somewhat inconsistent, depending on the year, but ranges from approximately \$100,000 to \$185,000 over the past three years.

\*\*\*

\*\*\* The parties established an extremely high standard of living during the marriage. Rodd's pre-decree financial affidavit, as admitted into evidence, set forth monthly expenses of \$49,873 \*\*\*. Gay's pre-decree financial affidavit \*\*\* set forth monthly expenses of \$48,232 \*\*\*.

\*\*\*

This Court performed its own analysis on Gay's pre-decree lifestyle expenses and her current income potential. \*\*\*

The monthly mortgage payment of \$4,095 in Gay's pre-decree lifestyle expenses was properly excluded because the house has already been paid off. For furniture and appliance repair/replacement, Gay's testimony and reasons for the higher expense are credible. Even though the same expense may not be incurred in another impending year, different appliances and furniture items will need to be repaired or replaced. This makes Gay's original estimate of \$1,359/month reasonable. The housekeeper expense is reasonable and should be included at the full amount because even if the children are not living there, the house is the same size and the housekeeper will cost the same amount. However, this Court reduced the amounts for food, family dining out, family entertainment, and telephone, since the children are emancipated. \*\*\* This brings Gay's pre-decree household expenses to about \$11,600/month.

Gay's disclosed values for her pre-decree transportation expenses are reasonable and credible based on the statements and testimony. \*\*\* Therefore, the transportation expenses approximate \$530/month.

Based on the testimony and disclosures pertaining to Gay's pre-decree lifestyle, her monthly expense for clothing is reasonable at \$1,756 as she disclosed. \*\*\* For grooming, Gay's expenses are reasonable at \$300/month after deducting a portion for children's expenses. \*\*\* This brings Gay's total for personal expenses to about \$2,334/month.

The bulk of the charitable donations \*\*\* are from a mandatory donation, \*\*\* which is not an ongoing expense. \*\*\* For the gym expense, the amount should include the cost of the classes Gay attends and the cost of the gym membership, bringing the expense to \$324/month. \*\*\* Spending cash should be allocated at \$2,500. \*\*\* The retirement payments into Gay's 401K are an appropriate lifestyle expense. \*\*\* [T]hey can be added as a lifestyle expense at \$2,000/month. This brings the total for her miscellaneous expense to \$8,825/month.

Based on the data shown above, Gay's pre-decree lifestyle expenses are approximately \$23,290/month. This comes to approximately \$41,600/month gross to account for taxes, which makes her annual gross needed to support her pre-decree lifestyle expenses \$499,200. After subtracting her average annual gross cash inflow (\$219,374) based on 2015 and estimated 2016 (no distribution in 2014), the gross maintenance payment is \$279,826 or \$23,320/month."

The court ordered Rodd to pay "\$23,320 per month in indefinite maintenance with the award being made retroactive to August 1, 2015."

¶ 11 Rodd filed a motion to reconsider, challenging the court's ruling on the admissibility of evidence and the finding that Gay's relationship with Brown did not eliminate her right to maintenance.

¶ 12 At oral argument on the motion to reconsider, Rodd's attorney disputed the court's finding that a lifestyle expense of \$23,290 per month "comes to approximately \$41,600/month gross to account for taxes." The trial court denied the motion to reconsider on all issues other than taxes. The court asked the parties for briefs regarding taxes. Gay argued that the court lacked jurisdiction to reconsider taxes because Rodd did not raise the issue at trial or in his written motion to reconsider. The trial court agreed with Gay and did not modify its order of June 2017. Rodd now appeals.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Rodd argues that the trial court erred by (1) finding that Gay's relationship with Brown did not warrant termination of maintenance; (2) considering evidence of the parties' pre-dissolution lifestyle and income; (3) awarding Gay permanent maintenance; (4) awarding maintenance in excess of the amount Gay agreed to accept in the MSA; and (5) finding that Gay needed \$41,600 per month in gross income to net \$23,290 per month after taxes.

¶ 15 A. *De Facto* Marriage

¶ 16 The parties agree on the principles governing our review of the trial court's finding that Gay's relationship with Brown did not justify termination of maintenance. "[A] party's maintenance may be terminated when it is shown that the party is engaged in a resident, continuing, conjugal relationship with a third party." *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 188 (2004).

¶ 17 "The party seeking the termination of maintenance has the burden of establishing that the receiving spouse is cohabiting with another. [Citation.] In determining whether the petitioner

has met his or her 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. [Citation.] Each termination case turns on its own set of facts; just as no two relationships are alike, no two cases are alike. [Citation.] The reviewing court will not upset 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." *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 40.

¶ 18 The *Miller* court explained the difference between a *de facto* marriage, which justifies termination of maintenance, and an intimate dating relationship, which does not justify such termination. The *Miller* court said:

"[C]ourts should be mindful that the circumstances of an intimate dating relationship are also likely to involve facts that fit into each of the six factors, such that those facts in their totality must attain a certain gravitas to establish a *de facto* marriage.

\*\*\*

\*\*\* [I]n using the six-factor analysis, a court must weigh the seriousness or magnitude of a given factor and not just note its presence. Courts should look for signs of mutual commitment and permanence. Moreover, courts should not allow the language of the six-factor analysis to trigger a search for only emotional and social components of a relationship. Instead, courts must also

look to the totality of the circumstances to 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).

\*\*\*

\*\*\* Intimate dating relationships have companionship and exclusive intimacy, whereas marriage-like relationships, while likewise having companionship and exclusive intimacy \*\*\* also have a deeper level of commitment, intended permanence, and, unless reasonably explained, financial or material partnership (which would most commonly come in the form of a shared household). \*\*\*

\*\*\*

We acknowledge that a couple can cohabit even where each member of the couple maintains a separate household. [Citation.] However, where the cohabitation must be 'resident,' these cases are the exception, and, in general, the absence of a shared residence and of shared housing resources, or, at least, of a shared day-to-day existence, is a significant hurdle for a petitioner to overcome."

*Miller*, 2015 IL App (2d) 140530, ¶¶ 46-64.

¶ 19 The trial court here listed exhaustively the relevant facts and emphasized the separate residences, the lack of financial entanglement, the lack of plans for permanence, and the substantial time the parties spend apart.

¶ 20 Rodd argues that if Brown and Gay were not so rich, they would probably live together from financial need. We cannot base a reversal of the trial court's findings on such conjecture. The finding of an intimate dating relationship, not a *de facto* marriage, is not contrary to the manifest weight of the evidence.

¶ 21 B. Pre-Dissolution Standard of Living

¶ 22 Rodd argues that the trial court erred by admitting into evidence testimony and documents concerning the parties' lifestyle before the divorce. Rodd argued that in view of the *res judicata* effect of the 2011 dissolution judgment, the evidence bore no relevance to any issue properly before the court. Rodd asks us to review the issue *de novo*, just as we would review the issue of whether to dismiss a cause of action as *res judicata*. See *Tebbens v. Levin & Conde*, 2018 IL App (1st) 170777, ¶¶ 20-21. But Rodd does not contend that the court should have dismissed any cause of action as *res judicata*. Instead, he sought to have the court bar evidence as irrelevant. We will not reverse the trial court's evidentiary rulings unless the trial court abused its discretion. *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993).

¶ 23 The MSA provided that Gay's maintenance would terminate on July 31, 2015, unless she filed "a petition seeking review of her right to receive further maintenance." Rodd asks this court to treat Gay's petition not as a petition for review but as a request for modification of the maintenance award. Unlike a party seeking review of maintenance, a party who seeks modification of a maintenance award bears the burden of showing a substantial change in circumstances. *In re Marriage of Zeman*, 198 Ill. App. 3d 722, 737 (1990). "Where the MSA provides for unallocated maintenance and support that is 'reviewable' after a period of years, the parties have agreed to a general review of maintenance. [Citation.] A general review of

maintenance does not require the moving party to prove a substantial change in circumstances. [Citation.] Instead, the trial court considers the factors set forth in sections 504(a) and 510(a-5) of the Act and determines whether 'to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms.' " *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 24, quoting *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). The MSA expressly permitted Gay to file a petition for review of the award. We find that Gay filed a petition for review, and she did not have a burden of proving a substantial change in circumstances to justify a change in the maintenance award.

¶ 24 The MSA acknowledged that sections 504 and 510(a-5) of the Act establish the factors the trial court must consider when reviewing maintenance. Section 504 provides that the court must consider:

- "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
- (2) the needs of each party;
- (3) the realistic 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) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;
- (6) 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 any parental responsibility arrangements and its effect on the party seeking employment;
- (7) the standard of living established during the marriage;
- (8) the duration of the marriage;
- (9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;
- (10) all sources of public and private income including, without limitation, disability and retirement income;
- (11) the tax consequences of the property division upon the respective economic circumstances of the parties;
- (12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;
- (13) any valid agreement of the parties; and
- (14) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2016).

"(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 of 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 2016).

¶ 26 The court cannot consider "the standard of living established during the marriage" (750 ILCS 5/504(a)(7)(West 2016)) if it disallows all evidence of that standard of living.

¶ 27 Rodd contends that, under *Blum* and *S.D.*, the court should have barred all pre-dissolution evidence, including evidence of the parties' pre-dissolution standard of living. The trial court in *Blum*, reviewing a maintenance award, considered evidence of the parties' "high standard of living during their 17-year marriage." *Blum*, 235 Ill. 2d at 38. The *Blum* court held that "the trial court considered the enumerated statutory factors and that the record supports its decision." *Blum*, 235 Ill. 2d at 38. The trial court in *S.D.* "allow[ed] *S.D.* to testify as to the standard of living she enjoyed during the marriage." *S.D.*, 2012 IL App (1st) 101876, ¶ 42. The appellate court found no error. *S.D.*, 2012 IL App (1st) 101876, ¶ 42.

¶ 28 The *S.D.* court said, "A maintenance award is *res judicata* as to facts at the time the award was entered." *S.D.*, 2012 IL App (1st) 101876, ¶ 41; see *In re Marriage of Connors*, 303 Ill. App. 3d 219, 226 (1999). In *Hoffman v. Hoffman*, 330 Ill. 413, 417 (1928), our supreme court explained:

"Where a former adjudication is relied upon as an absolute bar, there must be, as between the actions, identity of parties, of subject-matter and of cause of action. When the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered. Where some controlling fact or question material to the determination of both causes has been adjudicated in the former suit by a court of competent jurisdiction and the same fact or question is again at issue between the same parties, its adjudication in the first cause will, if properly presented, be conclusive of the same question in the later suit,

irrespective of the question whether the cause of action is the same in both suits or not."

¶ 29 Here, the former adjudication, the dissolution judgment, expressly left open the possibility of a review of maintenance. The former adjudication prevents relitigation of the matters already adjudicated. The court's dissolution judgment resolved that "the parties consider it to be in their respective best interest to settle \*\*\* the matter of maintenance and support," "RODD shall pay GAY reviewable, modifiable maintenance in the amount of Twenty-One Thousand Dollars (\$21,000) per month for a period of four (4) years," the MSA "is not unconscionable," and under the MSA "the children will be maintained in the standard of living they would have enjoyed had the marriage not been dissolved." The dissolution judgment includes no findings regarding the parties' standard of living during the marriage, and no findings as to whether the maintenance payment would allow Gay to maintain her standard of living at the level she enjoyed during the marriage. None of the trial court's rulings or findings on review of maintenance conflict with the findings on issues resolved by the judgment of dissolution. Section 504 of the Act imposed on the court a duty to permit the parties to introduce evidence of their pre-dissolution lifestyle. 750 ILCS 5/504(a)(7)(West 2016). The court did not abuse its discretion by denying the motion to bar evidence of the parties' pre-dissolution standard of living.

¶ 30 C. Permanent Maintenance

¶ 31 Next, Rodd argues that the court erred by awarding permanent maintenance. "Permanent maintenance is appropriate where the spouse receiving it is not employable at a level to allow her to live at the standard of living established during the marriage or is not employable at

all. [Citation.] Permanent maintenance may be warranted in a lengthy marriage where the recipient spouse devoted his or her time to raise the children. [Citation.] This court reviews a trial court's decision to award permanent maintenance for an abuse of discretion." *In re Marriage of Churchill*, 2019 IL App (3d) 180208, ¶ 26.

¶ 32 On this issue, we find this case effectively indistinguishable from *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008). In *Heroy*, the trial court awarded the wife permanent maintenance, even though she had a law degree. The appellate court said:

"[W]e must consider not simply whether [the wife] is able to support herself, but rather, whether she is able to support herself at the standard of living enjoyed by the parties during the marriage. [Citation.] Accordingly, 'a permanent maintenance award is justified where the spouse has employment skills but there is a discrepancy between her probable future income and the amount of income that would provide the standard of living she enjoyed while married.' " *Heroy*, 385 Ill. App. 3d at 652, quoting *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 619 (2004).

¶ 33 Here, the trial court found that Gay could support herself, but without maintenance she could not maintain the standard of living she enjoyed during the marriage. The evidence supports the court's finding. The trial court did not abuse its discretion by awarding permanent maintenance.

¶ 34 D. Amount of Maintenance

¶ 35 Rodd contends the trial court abused its discretion by awarding Gay monthly maintenance of more than \$21,000 per month, when she agreed to maintenance of \$21,000

per month for four years in the MSA. We review the trial court's findings of fact under the manifest weight of the evidence standard. *In re Marriage of Walker*, 386 Ill.App.3d 1034, 1041 (2008). We will not disturb the trial court's award of maintenance unless the trial court abused its discretion. *In re Marriage of Golden*, 358 Ill. App. 3d 464, 472 (2005).

¶ 36 The MSA directed the trial court to consider all the factors listed in sections 504 and 510(a)(5) of the Act on review of maintenance. The trial court expressly considered all the factors and laboriously examined all of the testimony about Gay's expenses. Rodd points out that several of Gay's expenses decreased in the years leading up to the maintenance review. Gay no longer pays a mortgage – and the trial court included no mortgage in its assessment of Gay's expenses. Gay no longer had responsibility for her children – and the trial court "reduced the amounts for food, family dining out, family entertainment, and telephone, since the children are emancipated."

¶ 37 The trial court found Gay able to support herself but in need of maintenance to maintain the standard of living she enjoyed during the marriage. See *Heroy*, 385 Ill. App. 3d at 652. The trial court's findings regarding Gay's income and expenses are not contrary to the manifest weight of the evidence.

¶ 38 E. Taxes

¶ 39 Rodd claims that the trial court erred in its assessment of the taxes Gay will need to pay, and the error caused the court to overstate the amount of maintenance Gay needed to meet her expenses.

¶ 40 We find the trial court erred in its calculations of monthly and retroactive maintenance because an incorrect tax rate was applied to gross-up the maintenance award. The trial

court's finding was not supported by the evidence as the court did not consider graduated federal tax rates, applicable exemptions, deductions (standard or itemized), or the effective tax rate based on Gay's prior years' tax returns that were in evidence. Therefore, the amount of monthly and retroactive maintenance are reversed, and the matter is remanded for the trial court to reconsider tax consequences and to recalculate monthly and retroactive maintenance.

¶ 41

### III. CONCLUSION

¶ 42

Rodd did not prove that Gay and Brown had a *de facto* marriage. The evidence supports the trial court's findings that Gay needed permanent maintenance to retain the standard of living she enjoyed during the marriage. The court's findings concerning Gay's income and expenses are not contrary to the manifest weight of the evidence. The trial court erred when it failed to use the proper rate of taxation for calculating maintenance. Accordingly, we affirm in part, reverse in part, and remand for further proceedings consistent with this order.

¶ 43

Affirmed in part and reversed in part; cause remanded with directions.