

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
CRAIG A. PARTIN,)	of Du Page County.
)	
Petitioner-Appellant,)	
)	
and)	No. 12-D-2614
)	
SANDRA S. PARTIN,)	Honorable
)	Neal W. Cerne,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of petitioner's motion to terminate maintenance was against the manifest weight of the evidence: petitioner provided substantial, unequivocal evidence that respondent was in a *de facto* marriage, and the contrary evidence, to the extent it was even legally relevant, was *de minimis*.

¶ 2 Petitioner, Craig A. Partin, appeals from an order of the circuit court of Du Page County finding that respondent, Sandra S. Partin, was not cohabiting with another person on a resident, continuing conjugal basis, and thus denying his motion to terminate maintenance. Because the finding that respondent was not cohabiting is against the manifest weight of the evidence, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Petitioner filed a motion to terminate the postdissolution maintenance that he was required to pay respondent. Petitioner asserted that maintenance should be terminated under section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(c) (West 2012)) because respondent was cohabiting with another person on a resident, continuing conjugal basis.

¶ 5 The following evidence was admitted at the hearing on the motion to terminate maintenance. Petitioner submitted several text messages between himself and respondent. In one, respondent stated that she was “getting a place with Chris [Bice].” In another, respondent stated that she and Bice were not “just dating [but] we are going to be living together very soon.” In yet another, petitioner asked respondent whether her new place was hers, Bice’s, or “both of [theirs],” to which she answered, “It’s both of ours[.]” When petitioner texted that he thought Bice had his own place, respondent replied that “[h]e did [but] he gave his notice and we got this place together[.]” In another text message, respondent stated that “[o]ne day [she would] be [Bice’s] wife,” but that that would not occur for three years because she was “getting every penny [petitioner’s] ass is giving [her].” In another text message, respondent stated that she and Bice had spent Easter together with his family.

¶ 6 Petitioner also submitted two of respondent’s Facebook postings. One showed a photograph of a residence and contained text stating, “Home Sweet Home!!! Today is the day!!! So excited to be on this journey with you babe:)” and “feeling excited with Chris Bice.” The other Facebook posting included an entry stating, “Moved to Four Lakes Ski Area,” followed by “April 13 with Chris Bice.” That posting also stated that “we got out first place together [and]

we are going to be so happy here.” Respondent admitted sending the text messages and creating the Facebook postings.

¶ 7 Respondent testified in petitioner’s case that her rent was \$950 a month for a one-bedroom apartment. She denied that Bice was named on the lease or that he paid any rent. Although petitioner testified that he spoke to respondent on the telephone and that she told him that she and Bice were splitting the rent, she denied telling petitioner that.

¶ 8 When asked on direct examination, respondent denied that Bice had any personal belongings at the apartment. Petitioner, on the other hand, testified that their three children, after spending the weekend with respondent, told him that Bice had his cat, television, video gaming systems, and belongings at the apartment.

¶ 9 According to respondent, Bice worked in Wisconsin and stayed at the apartment only on the weekends. She admitted that she and Bice had engaged in sexual relations.

¶ 10 Respondent, who proceeded *pro se*, did not challenge petitioner’s evidence regarding the text messages or Facebook postings or offer any of her own evidence. She stated to the court, however, that petitioner needed to understand that he was obligated “to pay for three years” and that, just because she had a new boyfriend, petitioner could not “dump into some dude’s lap.” She added that “it doesn’t work that way; and the State of Illinois and the law [were] not going to allow it to work that way.” She stated that she had received the “short end of the stick in this divorce,” that she did not want to get divorced, and that it was “not going to go down this way.”

¶ 11 The trial court responded by stating, “Okay. All right. I’m going to deny the motion to terminate.” The court explained that petitioner needed to show more than a dating relationship; petitioner needed to show that respondent and Bice were cohabiting and “that [Bice] is, in essence, supporting her and, in essence, acting as a husband and supporting her.” The court

added that it was denying the motion because there was no showing that respondent and Bice were cohabiting. The court did not mention, however, the text messages or the Facebook postings. When petitioner's counsel asked the court to clarify the basis of its decision, the court responded that it was based on the lack of cohabitation. When counsel asked the court whether its decision was based on Bice not providing financial support, the court answered, "Or that he's living there." The court added that "[e]ven if he's coming on the weekends, that's not living there," and asked counsel, "How is that different from a dating relationship?" Counsel answered that, even if he worked out of town and was there only on the weekends, the evidence showed that he was still living there. The court responded, "Okay. I'm still going to deny the motion." Petitioner filed a timely notice of appeal.¹

¶ 12

II. ANALYSIS

¶ 13 On appeal, petitioner contends that the denial of his motion to terminate maintenance is against the manifest weight of the evidence. He requests that we reverse that decision and remand to have the trial court terminate maintenance as of April 13, 2014, the date on which, the evidence established, respondent began cohabiting with Bice. Respondent has not filed a brief.

¶ 14 Section 510(c) of the Act provides, in pertinent part, 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 2012). The rationale behind terminating maintenance under that provision is to prevent the inequity created when the ex-spouse receiving maintenance becomes involved in a husband-wife-type relationship while

¹ We note that the date on the transcript of the hearing is August 13, 2014. However, the written order denying the motion is dated June 13, 2014, and the notice of appeal is dated July 2, 2014.

continuing to receive maintenance. *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929 (2006). The burden is on the party seeking termination to prove that the other party is involved in a *de facto* husband-wife relationship. *In re Marriage of Susan*, 367 Ill. App. 3d at 929. In deciding whether the burden has been met, the courts look to the totality of the circumstances and typically consider the following factors: (1) the length of the relationship; (2) the amount of time the couple spends together; (3) the nature of the activities engaged in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together. *In re Marriage of Susan*, 367 Ill. App. 3d at 929. Every case in which termination is sought presents a unique set of facts. *In re Marriage of Susan*, 367 Ill. App. 3d at 930.

¶ 15 Moreover, where the asserted ground for termination is a *de facto* marriage, the issue is not whether the relationship leaves the recipient financially secure, but rather whether the relationship is effectively a marriage. *In re Marriage of Susan*, 367 Ill. App. 3d at 931. Unlike a case in which termination is based on a substantial change of circumstances (see 750 ILCS 5/510(a) (West 2012)), where the most important question is whether the changed circumstances have materially affected the recipient's need for support, the dispositive question under section 510(c) is simply whether the recipient is involved in a husband-wife-type relationship. *In re Marriage of Susan*, 367 Ill. App. 3d at 931. To that end, unlike section 510(a), which expressly incorporates the factors related to an award of maintenance, including financial need, section 510(c) makes no mention of those factors. *In re Marriage of Susan*, 367 Ill. App. 3d at 932. Thus, the plain language of section 510(c) does not contemplate an analysis of the recipient's financial needs. *In re Marriage of Susan*, 367 Ill. App. 3d at 934.

¶ 16 The finding as to whether a *de facto* husband-wife relationship exists will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Marriage of Susan*,

367 Ill. App. 3d at 930. In deciding whether a judgment is against the manifest weight of the evidence, we view the evidence in the light most favorable to the appellee. *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004). A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly evident or when the findings are unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007). When applying the manifest-weight standard, a reviewing court may not reverse a judgment merely because it disagrees with it or, had it been the trier of fact, it might have come to a different conclusion. *In re Marriage of Matchen*, 372 Ill. App. 3d at 946. The issue of whether the trial court applied the correct legal standard to the evidence, however, presents a question of law, which is reviewed *de novo*. *Reliable Fire Equipment Co. v. Arredondo*, 2012 IL 111871, ¶ 13.

¶ 17 Before we reach the merits of this appeal, we address the absence of an appellee's brief. Our supreme court has prescribed the procedure available to a reviewing court when an appellee does not file a brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). In that regard, we have three options: (1) if justice so requires, we may serve as an advocate for the appellee and search the record for the purpose of sustaining the judgment; (2) if the record is simple and the issues can be decided easily, we may decide the merits of the case; or (3) if the appellant's brief demonstrates *prima facie* reversible error that is supported by the record, we may reverse the judgment. See *Talandis*, 63 Ill. 2d at 133. Here, because the record is simple and the issue can be decided easily, we decide the merits.

¶ 18 Turning to the merits, petitioner presented substantial, unequivocal evidence that respondent was cohabiting in a resident, continuing conjugal relationship. The text messages, which respondent acknowledged sending, clearly evinced that she and Bice were living together

at the new apartment. Respondent texted that she and Bice were not just dating but were going to be living together and that she was “getting a place with [Bice].” When petitioner asked whose place the new apartment was, respondent answered that it was both hers and Bice’s, that Bice had given notice regarding his former residence, and that they had gotten the new place together. Finally, respondent stated in a text message that she and Bice had spent Easter together with his family. Those text messages, collectively, were compelling evidence that respondent and Bice were cohabiting within the meaning of section 510(c) of the Act.

¶ 19 Moreover, the Facebook postings constituted further substantial evidence of respondent’s cohabiting. In one posting, respondent included a photograph of the new apartment along with a comment that it was “Home Sweet Home” and that she was excited to be on the journey with Bice. The other posting was entitled “Moved to Four Lakes Ski Area” and stated, “April 13 with Chris Bice.” That posting also stated that “we got our first place [and] we are going to be so happy here.” The Facebook postings were significant evidence that as of April 13, 2014, respondent and Bice were cohabiting in a resident, continuing conjugal relationship.

¶ 20 Additionally, respondent admitted that she was having sexual relations with Bice. Although a conjugal relationship does not require sexual relations (see *In re Marriage of Sappington*, 106 Ill. 2d 456, 466-67 (1985)), that fact further substantiated the existence of a husband-wife-type relationship between the two.

¶ 21 The text messages, the Facebook postings, and the sexual relationship constituted what can be described only as overwhelming evidence that respondent was cohabiting. Moreover, respondent did not challenge her statements in the text messages or Facebook postings, or otherwise try to explain them. Therefore, petitioner presented substantial,

unequivocal evidence, which showed, as required by section 510(c) of the Act, that respondent was in a resident, continuing conjugal relationship with Bice.

¶ 22 On the other hand, any contrary evidence was *de minimis*. Although we view it in the light most favorable to respondent (see *In re Marriage of Bates*, 212 Ill. 2d at 516), it is not enough to sustain the trial court's ruling.

¶ 23 Respondent denied that Bice was a party to the apartment lease or that he paid any of the rent. As noted, however, the recipient's financial need is not an issue under section 510(c). *In re Marriage of Susan*, 367 Ill. App. 3d at 934. Indeed, the trial court erred when it stated that petitioner needed to submit evidence that Bice was supporting respondent. Thus, to the extent that the court's ruling was based on the fact that Bice was not paying any of the rent, the court erred as a matter of law.

¶ 24 Respondent also testified that Bice was at the apartment only on the weekends, because he worked in Wisconsin during the week. However, a husband-wife-type relationship under section 510(c) need not be like a traditional or model "marriage." See *In re Marriage of Roofe*, 122 Ill. App. 3d 56, 60 (1984). Therefore, given that Bice worked out of state, the fact that Bice and respondent spent time together only on the weekends did not evince that they were not cohabiting within the meaning of section 510(c).

¶ 25 The final piece of evidence that we consider is respondent's denial that Bice kept any personal belongings at the apartment. We note that petitioner countered that denial. In any event, even taken as true, it is simply too slender a reed upon which to conclude that respondent was not cohabiting with Bice. Admittedly, the absence of personal belongings, whatever that term might mean, constitutes some evidence of a lack of cohabitation. However, in this case, such barebones evidence was insufficient to counter the substantial and unchallenged evidence of

respondent's own statements in the text messages and Facebook postings that she and Bice were living together in the apartment.

¶ 26 When the evidence is viewed in its totality, a conclusion that respondent was cohabiting in a resident, continuing conjugal relationship with Bice as of April 13, 2014, is clearly evident.² In reaching that conclusion, we are mindful of our duty not to reverse a judgment merely because we disagree with it or, as the trier of fact, we would have come to a different conclusion. This case, however, is a rare instance in which the evidence supporting the judgment is paper-thin at best and the evidence supporting the opposite conclusion is overwhelming. Because the opposite conclusion is clearly evident, the judgment is against the manifest weight of the evidence.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we reverse the order of the circuit court of Du Page County denying petitioner's motion to terminate maintenance and remand the cause for the appropriate relief.

¶ 29 Reversed and remanded.

² Because the evidence consisted primarily of respondent's own unequivocal statements, which she never denied or otherwise challenged, we need not address the specific factors that typically determine whether a party is cohabiting within the meaning of section 510(c).