2018 IL App (2d) 160990-U
No. 2-16-0990
Order filed March 22, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CHRISTIAN BURGER, Petitioner-Appellant, and ANITA BURGER, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 09-D-1399 Honorable Timothy J. McJoynt, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court correctly denied the petitioner's petition to terminate maintenance as its finding that respondent and her paramour were not engaged in a resident, continuing conjugal relationship was not against the manifest weight of the evidence.

¶ 2 Petitioner, Christian Burger, appeals the trial court's denial of his petition to terminate maintenance pursuant to section 510(c) of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"), which alleged that respondent, Anita Burger, engaged in a resident, continuing conjugal relationship with William Calhoun beginning in September 2014. Petitioner contends that the trial court's ruling was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 6, 2011, the trial court entered a judgment for dissolution of the parties' marriage. The judgment provided, in relevant part, as to maintenance:

> "Petitioner shall pay to respondent the sum of $5,700 per month as periodic maintenance. Said maintenance shall be reviewed in 5 years. Change of circumstances, as set forth in Section 510 of the IMDMA will govern review at any time. Maintenance shall terminate upon the death of either party; or upon Respondent's remarriage or cohabitation ***."

¶ 5 On August 9, 2011, the parties entered into an agreed order which modified the terms of the dissolution judgment by eliminating the mandatory review of maintenance after five years. The order further amended the judgment by providing that petitioner could file a petition to modify maintenance "[u]pon a substantial change of circumstances under section 510 of [the] IMDMA," and "said amount shall be modifiable by either party upon a proper showing."

¶ 6 Petitioner filed a petition to terminate maintenance on January 5, 2016, alleging that respondent was cohabitating with William Calhoun within the definition of 510(c) of the IMDMA for over one year. The petition sought termination of petitioner's maintenance obligations to respondent as well as reimbursement of maintenance paid since the date cohabitation began. Petitioner claimed cohabitation began no later than December 26, 2014. On January 27, 2016, respondent filed her response to petitioner's petition to terminate maintenance, generally denying that she was involved in a resident, continuing conjugal relationship with Calhoun. A trial on the petition to terminate maintenance was held on July 27 and July 28, 2016. The following evidence was elicited from respondent, Calhoun, and a private investigator's report entered in to evidence by petitioner.

¶ 7 Respondent resides in a single-family, three-bedroom home in Wheaton, Illinois. She pays $1,450 per month to rent the home and approximately $600 per month in utilities. Respondent and Calhoun began dating in November 2012. Calhoun was employed by Overland Contracting at that time as a cell tower repairman. His job required him to move from state to state for differing durations based on the nature of the work to be done. At the time the couple began dating, Calhoun was living at an Extended Stay hotel in Aurora, Illinois. He had been residing there for 18 months. The couple's relationship became exclusive around March 2013, though Calhoun had been moved by his employer to Fort Wayne, Indiana at that point. Respondent and Calhoun maintained daily phone conversations while residing apart and Calhoun would visit respondent at her home approximately one weekend per month from March 2013 through September 2013. The couple shared a bedroom during these visits and had sexual intercourse throughout the relationship.

¶ 8 Calhoun's job took him to Pittsburgh, Pennsylvania from September 2013 through May 2014, whereupon he was moved again; this time he was sent to Kansas City, where he remained until September 2014. Before leaving for Pittsburgh, Calhoun left his Toyota truck at respondent's home. From November 2013 through September 2014 (excluding March 2014), respondent wrote monthly personal checks to Calhoun for use of that vehicle. The checks ranged from $350 to $525. Calhoun paid for the registration and insurance on the truck. Respondent also paid a total of $1000 in December 2014 and January 2015 for repairs to the truck. During Calhoun's time in Pittsburgh and Kansas City, the couple spoke daily, traveled to see one another on occasion, and remained intimate during their visits.

¶ 9 Calhoun moved into respondent's residence in September 2014, after suffering a work-related knee injury. Calhoun remained living at respondent's residence until February 2016.

During Calhoun's time in respondent's residence he paid no rent or utilities. The couple shared a bedroom and maintained a sexual relationship during that time. The couple would engage in activities such as cooking meals, watching television, taking walks, attending the movies, going out with friends, and spending holidays together. The couple shared grocery expenses and Calhoun would do yard work, wash dishes, and perform other similar household chores. Calhoun had free access to the residence and still had a key to the residence at the time of trial.

¶ 10 Respondent and Calhoun took at least six vacations together during their relationship. Some of these vacations involved each of their respective family members. Calhoun's son stayed for a few weeks in respondent's home in the fall of 2015. When respondent's son underwent surgery in Portland, Oregon, she and Calhoun traveled there to visit. The couple traveled to Alabama to attend a NASCAR event and to visit with Calhoun's family. They traveled to the Outer Banks of North Carolina. They traveled to Indiana on several occasions with Calhoun to visit respondent's mother and stayed at hotels during these trips at respondent's expense. The couple also visited Joplin, Missouri on a trip in which respondent paid for meals, lodging, gas, and an unknown $439.31 activity, the nature of which respondent could not recall.

¶ 11 Respondent recalled a trip she took with Calhoun to Texas in March 2015. The purpose of this trip was for Calhoun to trade in his old Toyota truck for a new Toyota truck. Respondent withdrew $1000 from her bank account and gave the money to Calhoun for a down payment on the new vehicle. The new truck was titled and registered to Calhoun using a Texas address where a former girlfriend of Calhoun resides, although Calhoun had not resided there in over five years at the time of the truck purchase. Calhoun also paid to insure the vehicle. Upon returning to Illinois, respondent drove the new truck and paid Calhoun $600 per month for its use.

¶ 12 In addition to the monthly $600 check to Calhoun for the truck, respondent wrote Calhoun a check in September 2015, for "truck/phone/insurance." Respondent paid monthly for Calhoun to join on to her membership at the Wheaton Sports Center. Calhoun added respondent to his cellular telephone plan the fall of 2015 and continues to pay for her portion of the plan. Respondent wrote a check to Symphony Medical Group in January 2016, for Calhoun's medical bill. Respondent made two deposits to Calhoun's bank account in February 2016, totaling $1,500.

¶ 13 Calhoun left respondent's residence for a job assignment in Seattle sometime in early February 2016, within a month of the filing of petitioner's petition to terminate maintenance. Calhoun's truck remained at respondent's home and she continues to drive it. Calhoun also left some clothing and other household items in respondent's residence. Respondent deposited $1,500 into Calhoun's checking account to help him with his move and travel. This deposit was classified as a loan by respondent which was paid back through Calhoun allowing respondent to skip a couple of payments on the truck. The couple continues to speak daily by telephone, travels to visit each other, and remained in an exclusive relationship at the time of trial.

¶ 14 Respondent and Calhoun shared no bank accounts, never named each other as an emergency contact, never provided health insurance to each other, and Calhoun had no furniture in respondent's home. According to respondent and Calhoun, when Calhoun moved into respondent's residence in September 2014, the intent was for him to only stay there for four to six weeks. Following the re-injury to Calhoun's knee and the extended recovery time, the plan was for him to leave in May 2015. This plan was sullied by Calhoun's inability to secure employment. There were at least two occasions in which Calhoun was packed and ready to move out but the jobs he thought he had secured ultimately fell through.

¶ 15 Calhoun was prepared to leave the residence in May 2015, but was laid off from his job on the night prior to his intended departure. Other jobs looked promising to Calhoun in the subsequent months but none worked out. He was hired by the company he was working for at the time of trial in February 2016, whereupon he moved out of respondent's house and headed to Seattle.

¶ 16 Calhoun testified that he always intended to leave respondent's home once a job lined up for him. He recalled several going away parties thrown for him by respondent and mutual friends. The parties were in vain, however, as the jobs for which Calhoun was leaving did not materialize for assorted reasons. He has never been fond of Illinois and searched for jobs in states with more favorable weather.

¶ 17 Calhoun still uses his former girlfriend's address in Texas as his permanent residence, although he had not resided there for approximately five years at the time of trial. According to Calhoun, he uses this address because it allows him to avoid paying income taxes in other states, including Illinois.

¶ 18 At the close of evidence, the trial court ordered the parties to submit written closing arguments and set the date of August 31, 2016, to render its oral opinion.

¶ 19 In rendering its opinion on petitioner's petition to terminate maintenance, the trial court remarked that it had "considered all the evidence presented, the credibility of the witnesses including the demeanor and manner while testifying." The trial court then went on to classify the following facts as "uncontested and not disputed":

> "The basic evidence did show that Calhoun *** worked *** as a cable tower repairman and traveled the country doing that. He was hurt on the job ***. He received medical services in Illinois. While this occurred he resided or stayed with the respondent,

Anita Burger. This activity or residence began on September 14, 2014, *** and ended in February of 2016.

Mr. Calhoun hurt himself and, I guess, endured therapy and had a second surgery that was in December of 2014. And then he had a second *** therapy. And then in May of 2015, he indicated he was ready to go back to work and was laid off from work.

Thereafter Mr. Calhoun did a job search, got one or two offers. That, apparently, fell through for various reasons. After sixteen or seventeen months from September *** 2014, to February, 2015, Mr. Calhoun did move on to Washington State with his new employment that he received in the same type of industry.

About that same time is when Mr. Burger filed his Petition to Terminate Maintenance. That was in January of 2016. So *** within thirty days, Mr. Calhoun left and Mr. Burger filed his petition."

¶ 20 The trial court then acknowledged that the evidence showed that Calhoun "did not pay rent" and "did not pay bills" while living with respondent but did "do work and chores *** around the rental home ***." The trial court also found that the evidence showed respondent and Calhoun "did travel together [and] did visit relatives together approximately six times between September of 2014 and February of 2016 and it appears that [respondent] paid for most of those expenses for those trips."

¶ 21 The trial court found that the couple "had mutual sexual relations together" during the time Calhoun lived with respondent. The evidence showed that respondent put money down on a new truck titled in Calhoun's name and respondent paid Calhoun for the use of that truck. The couple "attended various events together, *** went shopping together, *** spent holidays together, *** [and] gave each other gifts *** on a regular basis."

¶ 22 The trial court found no evidence of commingled funds, joint bank accounts, joint estate plans, insurance plans, or significant furniture or furnishings owned by Calhoun in respondent's home. There was no evidence of any discussion of marriage between the couple and the testimony showed that there was no intent for Calhoun to stay permanently.

¶ 23 As to the factors weighed in making its finding that a resident, continuing conjugal relationship did not exist, the trial court mentioned the six-factor list found in *In re Marriage of Sunday*, 354 Ill. App. 3d 184 (2004), but believed the list of factors had grown much larger and listed the following:

> "Duration of relationship; existence of separate residences; moving of furniture between households; proportion of time spent together; nights shared with the same bedroom and shared meals; the romantic nature of the relationship including sexual relations; sharing of household chores; commingling of finances; sharing financial accounts such as checking and savings; co-ownership of other property including residences and vehicles; sharing expenses; providing for the other person in an estate plan; spending vacations and holidays together; exchanging of gifts; statements of parties regarding their relationship including their intentions; *** and other factors the Court deems relevant."

¶ 24 The trial court said that the "key in this case is [*In re Marriage of Miller*, 2015 IL App (2d) 140530]." The trial court felt that *Miller* "down-played the six-point list to a great extent and other lists including the list I just read and indicated that there must be more." One "key" to the present case found in *Miller* was, according to the trial court, "the intended permanence and mutual commitment." The other "key" found in *Miller* was "that if the [c]ourt finds that the relationship did not achieve a gravitas akin to marital behavior then cohabitation can't be found."

¶ 25 The trial court ultimately denied petitioner's petition to terminate maintenance and in so finding, articulated the following:

> "No permanency was ever intended by Calhoun and [respondent], or at least it wasn't proven. *** [M]aybe *Miller* has created a higher bar for cohabitation in the 2nd District. I'm not sure. It's above my pay-grade to make that statement but that is sort of what the [c]ourt's got here to a certain extent.
>
> *** I don't think the relationship with Mr. Calhoun and [respondent] arose to the required elements in the *Miller* case. I think the key to that was the intent to not make it permanent which I think is uncontested. It was not proven that it was ever intended to be permanent."

This timely appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Petitioner's sole contention in this appeal is that the trial court's denial of petitioner's petition to terminate maintenance was against the manifest weight of the evidence.

¶ 28 Section 510(c) of the IMDMA 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 Sappington*, 106 Ill. 2d 456, 467 (1985). Rather, "[t]he rationale behind termination of maintenance when resident, continuing, conjugal cohabitation exists is [to prevent] 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 * * *.' " *Miller*, 2015 IL App (2d) 140530, ¶ 40. "[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). The party seeking the termination of maintenance has the burden of establishing that the receiving spouse is cohabiting with another. *Id.* at 929. 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. *Id.* Each termination case turns on its own set of facts; just as no two relationships are alike, no two cases are alike. *Id.* at 930.

¶ 29 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. *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. *Miller*, ¶ 40.

¶ 30 In *Miller*, we explained that, while a consideration of the nonexhaustive list of six common-law factors is helpful to any maintenance termination analysis, courts should not take a checklist approach wherein they merely note the presence of certain facts that fit into each category. *Id.* ¶ 67. Courts should be aware that many of the six factors can be present in an intimate dating relationship as well as a *de facto* marriage. *Id.* As such, courts should consider the totality of the circumstances and look for a deeper level of commitment, intended

permanence, and, unless otherwise explained, financial or material partnership in order to determine that the former spouse and her new partner are involved in a *de facto* marriage. *Id*.

¶ 31 Here, the trial court seemingly reasoned that *Miller* precludes termination of maintenance if there is no evidence that expressly shows intended permanence by the couple while cohabitating. This reading of *Miller* is incorrect. The *Miller* decision does not dismiss the six-factor list; it merely instructs the courts to use the six-factors in looking for a deeper level of commitment, intended permanence, and financial partnership as additional circumstances that may give more weight to any or all of the six factors. *Id*. ¶ 67. The idea is to distinguish a *de facto* marriage from an intimate dating relationship. Intended permanence is not a prerequisite for finding a resident, continuing conjugal relationship under section 510(c). The same holds true for a "deeper level of commitment" and a "financial or material partnership." Rather, our reasoning in *Miller* was that these criteria are to be used in conjunction with the established six-factor list. Courts should use the six factors to help determine whether one or more of the three criteria are present. Thus, the criteria established in *Miller* were meant to help trial courts distinguish intimate dating relationships from *de facto* marriages. But intended permanence, or its lack thereof, is not dispositive of the existence or nonexistence of a *de facto* marriage or a resident, continuing conjugal relationship as described in section 510(c) of the IMDMA.

¶ 32 However, even though the trial court was overbroad in suggesting that intended permanence is the overriding factor in a termination of maintenance analysis, this does not mean that the trial court's finding in the present case was against the manifest weight of the evidence.

¶ 33 We first must view respondent and Calhoun's relationship through the lens of the six-factor list before examining whether the weight to be given to each factor takes the relationship

from that of an intimate dating relationship to one of a resident, continuing cohabitation. We will do so in order of their enumeration above.

¶ 34 The couple has had a long-standing relationship. They began dating in November 2012, and had continued their relationship up until the time of trial. From September 2014, through February 2016 the couple spent time in the same household. The relationship would be described by a reasonable observer as lengthy.

¶ 35 The couple spent a significant amount of time together during their relationship. In addition to living in respondent's home together for seventeen months, they engaged in activities like cooking, watching television, taking walks, going to the movies, socializing with friends, grocery shopping, and spending holidays together.

¶ 36 As to the nature of the activities engaged in by respondent and Calhoun, in addition to those discussed above, they vacationed together on numerous occasions, visited one another's families together, and allowed Calhoun's son to stay for an extended period in respondent's home. Their relationship was admittedly exclusive and sexually intimate.

¶ 37 The couple did not share any bank accounts or commingle personal finances, but there was evidence of some interrelation of personal affairs. Calhoun added respondent to his cell phone account and respondent added Calhoun to her gym membership. Respondent paid for repairs to Calhoun's vehicle and gave him $1,500 to help him move west for his new job. Respondent paid Calhoun monthly for the use of his truck while Calhoun continued paying for the insurance and registration on that same vehicle. They also shared grocery expenses for the home while Calhoun was living with respondent.

¶ 38 As discussed above, respondent and Calhoun vacationed together and respondent often paid for the expenses associated with those vacations. Additionally, these vacations sometimes

involved respondent's family members. And the couple admittedly spent holidays together, including Thanksgiving and Christmas with respondent's family.

¶ 39 Under a simple checklist approach, there can be no doubt that this relationship establishes the existence of each factor discussed above. However, the ultimate question we must answer in determining whether an ex-spouse receiving maintenance has been cohabitating with a new partner on a resident, continuing, and conjugal basis is whether the ex-spouse, according to the totality of the circumstances, has entered into a *de facto* marriage. *Miller*, 2015 IL App (2d) 140530 ¶ 49. A *de facto* marriage can be determined by an examination of whether the totality of circumstances show that 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. *Id*.

¶ 40 This court has long recognized the holding articulated in *Miller* regarding the six-factor list being weighed against a deeper level of commitment. In *In re Marriage of Weisbruch*, 304 Ill. App. 3d 99 (1999), this court spoke to a *de facto* marriage as one "where the relationship has achieved a permanence sufficient for the trial court to conclude that it has become a substitute for marriage." In *Weisbruch*, the former husband was paying $1,250 per month in unallocated child support and maintenance. Following both children of the parties reaching the age of majority, the former husband continued paying maintenance in that amount for the next seven years. *Id*. at 101. Former husband then filed a petition to terminate maintenance, arguing that the former wife was in a *de facto* marriage with her new female partner. *Id*. Evidence in that case showed that the new couple had purchased a home together eight years prior to the former husband's filing of the petition to terminate maintenance. *Id*. There was evidence that the new couple shared a bed together during two different periods of the eight years, totaling two and a half years of shared time, although the former wife said she was no longer sexually attracted to her partner at the time

of trial. *Id*. at 102. The couple also shared equally in all expenses related to the home, including the mortgage. *Id*. at 101. They cosigned loans for one another. *Id*. They co-owned their vehicles together. *Id*. The former wife named her new partner as the primary beneficiary of her will to the exclusion of her children, save for a specific bequest of $1,000. *Id*. at 101-02. She named her new partner as her power of attorney for health care. *Id*. at 102. The new couple discussed retiring together to Arizona and often vacationed together. *Id*. The former wife said that her shared expenses with her new partner had decreased her need of maintenance, but she still needed $950 per month to maintain her then-current lifestyle. *Id*. at 103.

¶ 41 The trial court in *Weisbruch* found, and this court affirmed, that the former wife was in a *de facto* marriage with her new partner. *Id*. at 108. This court held that even though the new relationship did not meet all of the former wife's needs, the former wife and her new partner looked to one another to provide material necessities, even if there was a lack of sexual attraction. *Id*. The evidence showed that there existed a relationship far more than that of just roommates or friendship, even though the new couple were members of the same sex. *Id*.

¶ 42 Here, respondent and Calhoun owned no property together. They were not the cosigners of any loans together. Calhoun owned the truck which respondent was driving but respondent paid Calhoun for use of that vehicle, a practice not typical of married couples. Neither person was named as beneficiary on any wills or life insurance policies, nor as power of attorney regarding healthcare. Although respondent and Calhoun often vacationed together, they had not discussed any plans to retire together or cohabitate permanently. Even though the couple exhibits many of the factors from the six-factor list, unlike in *Weisbruch*, respondent and Calhoun's relationship has not achieved permanence sufficient to conclude that it has become a substitute for marriage. In fact, beyond the uncontested evidence that respondent and Calhoun

never intended for Calhoun to remain in respondent's residence beyond the recuperation of his knee and subsequent job security, the relationship lacked the intended permanence described in *Miller* to find a *de facto* marriage as opposed to an intimate dating relationship.

¶ 43 In *Miller*, this court reversed the trial court's termination of former wife's maintenance by finding that the record reflected an absence of evidence that there was ever any intention to make the relationship permanent, commingle finances, or share the household or household duties. *Miller*, 2015 IL App (2d) 140530 ¶ 62. The former wife, Lorena, was receiving maintenance from the former husband, Jeffrey, when she began a relationship with her new partner, Michael. Both Lorena and Michael maintained their own residences although Michael often stayed at Lorena's home. *Id*. ¶ 63. Early in the couple's relationship, they had discussed marriage but Lorena was not interested in taking that step, tempering any future talks of the same. Lorena and Michael posted on Facebook that they were in a relationship and held themselves out as a couple to their friends. *Id*. ¶ 62. They hosted a Thanksgiving holiday together. *Id*. They shared a golf membership at a golf club under the label of "significant others" in order to secure a financially advantageous rate. *Id*. The couple never commingled any finances and each paid for their own expenses when traveling or dining out. *Id*. ¶ 63.

¶ 44 This court found that Lorena and Michael's relationship did not achieve a gravitas akin to marital behavior. *Id*. ¶ 69. A deeper level of commitment, permanence, and financial or material partnership were absent from the relationship such that the court could not elevate it beyond an intimate dating relationship. *Id*. The only minimal level of partnership toward the maintenance and acquisition of resources exhibited by the couple was their shared golf membership which could be terminated on short notice, and in fact was. Such minimal levels of partnership do not show a financial partnership similar to that of a married couple. *Id*. ¶ 63. Additionally, nothing

in the record contradicted that Lorena told Michael early in their relationship that she was not interested in getting married. *Id*. ¶ 67. No evidence was introduced of an intertwining of significant assets that would be difficult to undo. This court noted that although many of the factors contained within the six-factor list were present in Lorena and Michael's relationship, the totality of the circumstances did not illustrate a deeper level of commitment, intended permanence, and financial or material partnership to establish that Lorena and Michael were involved in a *de facto* marriage; this court concluded Lorena and Michael were engaged in merely an intimate dating relationship. *Id.* ¶ 69.

¶ 45 The totality of the circumstances in the present case, like those in *Miller*, illustrates an intimate dating relationship and not a *de facto* marriage. Here respondent and Calhoun were seeing each other for some time before Calhoun injured his knee and moved into respondent's residence. They have never seriously discussed being married. From the outset of their cohabitation, it was agreed between the couple that Calhoun would be leaving as soon as he was healed and ready to return to work. Although that plan was changed due to the re-injury of Calhoun's knee and his subsequent inability to secure a new job, there was no evidence presented to the trial court to suggest that respondent and Calhoun ever intended for the living arrangement to remain permanent.

¶ 46 Much like the golf membership shared by the couple in *Miller*, there was a minimal level of partnership toward the acquisition and maintenance of resources exhibited by respondent and Calhoun here. Calhoun added respondent to his cell phone plan and respondent added Calhoun to her monthly gym membership during his time residing in her home. Neither act illustrates a financial partnership similar to that of a married couple as both could be easily undone and, in fact, respondent did stop paying for Calhoun's gym membership. Similarly, respondent's

payment for the use of Calhoun's vehicle, although it remained titled and insured in his name, does not amount to the type of intermingling of financial assets arising to the level of a husband-wife like arrangement. This situation allowed for a financially advantageous arrangement for both respondent, who was able to secure the use of a vehicle, and Calhoun effectively secured a trusted sublessee for that vehicle.

¶ 47 In *In re Marriage of Lambdin*, 245 Ill. App. 3d 797 (1993), the appellate court affirmed the denial of a petition to terminate maintenance under a similar set of facts as exist in the present case. In *Lambdin*, the former husband petitioned to terminate maintenance while the former wife was engaged to her new boyfriend. *Id*. at 799. The boyfriend was a long-distance truck driver and parked his truck in the former wife's driveway while staying her house. *Id*. at 802-03. The couple was sexually intimate, talked on the phone daily, the former wife picked up boyfriend's mail while he was trucking, boyfriend used former wife's calling card to make long-distance phone calls, she cooked for him, they went out for dinner often where the boyfriend would pay, and boyfriend stored his personal items at former wife's house. *Id*. at 803. Following the filing of former husband's petition to terminate maintenance, the former wife broke off her engagement to her boyfriend and he began staying at her home on a much less frequent basis. *Id*. The couple shared no joint account of any kind. *Id*. The court said that it "[did] not have the prerogative to determine, *de novo*, the merits of the petition." *Id*. The court articulated that there would have been sufficient evidence to support the trial court's decision to either grant or deny the former husband's petition to terminate maintenance. *Id*. at 804. After reviewing the facts of the relationship between the former wife and her boyfriend, the court said that there was sufficient evidence to deny the petition and would not disturb the trial court's findings to that effect. *Id*.

¶ 48 In this case, respondent and Calhoun were never engaged and no evidence was presented that they ever considered getting married. The uncontested evidence presented in this case showed that Calhoun never considered respondent's home as his permanent residence and planned to move out upon securing a job in a more meteorologically friendly locale. Similar to *Lambdin*, respondent and Calhoun's living arrangement quickly changed following petitioner's filing his petition to terminate maintenance. However, the timing of Calhoun's departure notwithstanding, the evidence showed that he did indeed secure a job on the West Coast and left respondent's home accordingly, as was always the plan discussed by the couple. We cannot say that the trial court's determination that respondent and Calhoun were not engaged in a resident, continuing conjugal relationship was against the manifest weight of the evidence.

¶ 49 In summary, when considering the weight of the evidence, the presence of each of the six-factors in this case does not amount to a gravitas akin to marital behavior. Our consideration of the totality of the circumstances does not yield a deeper level of commitment, intended permanence, and financial or material partnership in order to determine that respondent and Calhoun were involved in a *de facto* marriage. Therefore, although the trial court's findings concentrated disproportionally on the idea of intended permanence as the deciding factor in this case, its ultimate finding denying petitioner's petition to terminate maintenance was not against the manifest weight of the evidence based on the totality of the circumstances.

¶ 50 III.CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 52 Affirmed.