2018 IL App (2d) 170522-U
No. 2-17-0522
Order filed March 28, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHAEL TURANSICK, Petitioner-Appellee, and LAURA TURANSICK, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 05-D-2240 Honorable Joseph V. Salvi, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court abused its discretion in denying permanent maintenance solely on the basis that the parties had not contemplated permanent maintenance in their earlier dealings; permanent maintenance was appropriate under the circumstances.

¶ 2 The respondent, Laura Turansick, appeals from the judgment of the circuit court of Lake County denying her request for permanent maintenance from the petitioner, Michael Turansick, and instead reducing the amount of maintenance and setting a nonmodifiable end date. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in 1987 and had two sons, who were born in 1993 and 1997. Laura worked outside the home during the first part of the marriage but stayed at home with the children beginning in 2001.

¶ 5 In 2005, Michael petitioned for dissolution of the marriage. The judgment of dissolution entered in 2007 incorporated a marital settlement agreement (MSA) that contained the following relevant provisions (as modified by handwritten insertions and strikeouts):

> "2.2 *Unallocated Maintenance and Support*. Commencing June 1, 2007, and continuing for a period of sixty (60) months, Michael agrees to pay to Laura unallocated maintenance and child support of $16,667.00 per month from the first $475,000.00 in gross employment income earned by Michael. *** Laura's right to receive maintenance beyond the sixty (60) month period above is reviewable upon her filing a pleading seeking to extend Michael's maintenance obligation. The burden of going forward by filing a petition for review and the burden of proof to show that maintenance should continue shall be on Laura. Laura shall have the obligations [*sic*] to take appropriate actions to eliminate her alleged need of spousal support from Michael within the applicable provisions of the [Illinois Marriage and Dissolution of Marriage Act] and supporting case law. In the event that no pleading is filed by Laura by May 31, 2012, then Laura's right to receive future maintenance will forever terminate."

On top of this unallocated support, the MSA also provided that Michael would pay additional amounts specifically designated as child support, equal to 28% of his yearly net income between $475,000 and $875,000, plus 15% of any yearly net income between $875,000 and $975,000. (Under a separate parenting agreement incorporated into the judgment of dissolution, the children were to reside with Laura.) The parties agreed that Michael was not obligated to pay

child support on his yearly income in excess of $975,000 because further sums were unnecessary to support the children in the lifestyle they would have enjoyed had the parties not divorced. As Michael's income was greater than $975,000 in every year beginning in 2007, the overall effect of the child support and unallocated support provisions of the MSA was that Michael was obligated to pay $200,000 per year in unallocated support and an additional $127,000 per year in child support.

¶ 6 In May 2012, Laura timely petitioned to review and extend maintenance. In October 2013, the petition was resolved through the entry of an agreed order. The agreed order reduced the amount of unallocated support to $12,000 per month and stated that "[t]he duration of maintenance set forth in *** this Order shall extend through January 31, 2017, unless terminated earlier for reasons which govern the termination of unallocated maintenance or maintenance as set forth in the MSA." Similar to the provisions of the dissolution judgment, unallocated support would terminate if Laura did not file a petition to extend maintenance, and the burden of proof on any such petition would be "governed by the terms and provisions set forth in Paragraph 2.2 of the MSA." Thus, as of October 2013, Michael was obligated to pay unallocated support of $144,000 per year and an additional $127,000 of child support.

¶ 7 In 2014, Michael petitioned to modify or abate his additional child support obligation on the ground that the youngest child was residing at an out-of-state boarding school. This petition was resolved through the entry of a February 2015 agreed order providing that the unallocated support would be reduced to $11,500 per month during the months that the child was living out of state and that the additional child support payments would be suspended during those months. The agreed order also made various provisions for the children's future educational needs.

Lastly, the agreed order stated that all other provisions of the MSA and any later court orders modifying the MSA remained in effect.

¶ 8 In 2016, Laura filed a petition seeking to permanently extend and increase maintenance. In it, she alleged that, although she was working as a full-time landscape designer, her income was only about $28,000 per year and she could not expect to make any more than about $35,000 per year. Her home, the primary asset she received through the dissolution, had depreciated in value and needed maintenance that she could not afford. Thus, she could not sustain her household or continue to enjoy the lifestyle the parties had experienced during the marriage without assistance. She believed that Michael's income and financial situation had improved since the dissolution and alleged that he could afford to provide her with permanent maintenance. Michael filed a response denying most of these allegations and arguing that Laura had not taken appropriate steps to become self-sufficient as required under the MSA, and so her maintenance should not be extended further. Michael also petitioned to terminate his obligation to pay child support on his income over $475,000 per year on the ground that both children were emancipated. This petition was resolved through the entry of an agreed order terminating his child support obligation as of June 2016.

¶ 9 The hearing on Laura's petition to permanently extend and increase maintenance took place over five days in January 2017. Laura and Michael both testified regarding their income, expenses, and the lifestyle they enjoyed during the marriage. Laura was 57 years old. She was employed as a landscape designer and earned about $28,000 per year, plus she received about $10,000 per year of free in-kind landscaping services from her employer. In recent years she had earned between $1,000 and $6,000 on landscaping side jobs. Michael was the managing partner of his law firm and earned over $4 million per year. His firm had recently adopted a mandatory

retirement age of 67. He planned to retire before then, at age 65. (Michael was 59 years old and would turn 67 in August 2024.) One of the firm's name partners had continued working even though he was older than 67. Michael acknowledged that, when the parties married, he had student loans. Those loans were fully paid off in 1995 or 1996, during a time when Laura was working outside the home.

¶ 10 Regarding the lifestyle enjoyed by the parties during marriage, Laura testified that the family had taken vacations each year to the Caribbean and elsewhere; she was able to purchase a new car every four or five years (paying cash); and she always maintained at least one horse for riding and showing (either leasing or owning them), at a cost of about $22,000 per year. The parties were able to remodel their home. Since the dissolution, however, Laura had not been able to take vacations or pay for needed maintenance on her home. Michael agreed that during the marriage the family took one or two vacations per year (giving examples of travel to various locations), Laura kept horses, and Laura bought a new car every four years. Michael bought a new car every three years. He commented that it was sometimes difficult for them to maintain this standard of living, stating that living in Lake Forest on $500,000 in 2005 "was a stretch" for the family. Michael testified that they lived frugally in some ways. For instance, although their home was located on a country club golf course, they never joined the country club.

¶ 11 Deborah Gordon, a vocational expert, testified regarding her evaluation of Laura's vocational capacity. Laura had earned a master's degree in historic preservation in 1983 and worked in that field when the family lived in New York. Her salary during that period ranged from $33,000 to $40,000 per year. (Her highest salary throughout her employment history was $40,000.) In 2001, Michael accepted a job with his current law firm in Chicago and the family moved from New York to Illinois.

¶ 12 Laura did not work outside the home from 2001 to 2010, serving as a homemaker instead. From 2005 on, Laura had sole custody of the two children, both of whom had special needs. (Gordon noted that, although the older son graduated from Northwestern University in 2015 and the younger son graduated from high school in 2016, both sons lived with Laura in 2015-2016.) While at home, Laura maintained an active volunteer presence, serving with the Lake Forest Historic Preservation Commission, the Elawa Farm Commission, the Forest Park Historic Preservation Advisory Committee, and the Lake Forest Preservation Foundation.

¶ 13 In 2010, Laura began working part-time at a landscaping company. Initially, she worked about 10 hours per week in exchange for in-kind landscaping services having a value of $600-700 per month. In 2011, the parties' oldest son graduated from high school and Laura began working half time. In 2013, she became a paid full-time employee at the same firm, earning a little over $2,000 per month. Gordon opined that Laura's decision to go into the landscape design field was appropriate, as she had worked in that area during her previous historic preservation jobs. Further, her use of barter as a way to get back into the workplace was appropriate.

¶ 14 Gordon performed vocational aptitude testing on Laura. Laura had average or high average scores across most categories, although her scores in math computation, numerical aptitude, and spatial aptitude were in the low average range. In investigating local positions that might be appropriate for Laura, Gordon found that Laura's employability in the field of landscape design was limited by the fact that she was not familiar with AutoCAD or other computerized design software. If she had obtained such training, Laura would be eligible for positions at the high end of the $40,000 to $55,000 salary range; without it, she was limited to

positions at the low end. Laura was also potentially employable as a grant writer in the field of historic preservation or a related field, at a salary range of $45,000 to $68,882.

¶ 15 Gordon noted that Laura made substantial efforts to obtain better employment. She applied for jobs, checked LinkedIn and other websites monthly for jobs in her field, and took other steps to find employment, but she was getting a lot of rejection letters. Laura appropriately sent out different versions of her resume for different positions. Gordon opined that Laura could improve her chances by learning AutoCAD and by tweaking her resume and LinkedIn profile.

¶ 16 Two accountants also testified regarding Laura's monthly living expenses. Cathy Belmonte-Newman (Michael's expert) examined Laura's financial records for 2015 and concluded that Laura's adjusted monthly living expenses were $12,800. Belmonte-Newman did not include any amortization expense for Laura's recent purchases of a car and a horse because those expenses did not occur in 2015. She included amortization for a new appliance, amortized over 5 years. Although she has conducted "lifestyle" analyses for divorcing clients in the past, she did not conduct such an analysis here. Edwin Schroeder (Laura's expert) did conduct a lifestyle analysis, reviewing Laura's financial records for a 42-month period. He testified that averaging over a longer period gave a truer picture, as it better picked up occasional large expenditures such as the replacement of a car or appliances (he included Laura's purchase of both these items on an amortized basis). He also included amortization of a horse Laura had purchased. Schroeder criticized Belmonte-Newman for failing to take these expenditures into account. He calculated that Laura's adjusted monthly living expenses were $15,600. The two experts' calculations of Laura's adjusted monthly living expenses did not include the amount necessary for Laura to pay her income taxes. If money for tax payments was included, the monthly amount would be higher.

¶ 17 At the close of the hearing, the trial court took the matter under advisement. On February 7, 2017, it issued its decision. Although Laura had requested a modification of the judgment of dissolution, *i.e.*, making maintenance permanent, the trial court denied this request on the basis that the MSA and later agreed orders did not reflect any agreement by the parties to permanent maintenance. Instead, the trial court considered the matter before it to be a review of maintenance, and thus it did not apply the substantial-change standard for modification. Under the MSA, Laura bore the burden of demonstrating that she had made reasonable efforts to become self-sufficient. The trial court made no explicit finding of whether Laura had met this burden. However, it ultimately extended her maintenance, an implicit determination that the burden had been met.

¶ 18 Regarding the relief that it could grant, the trial court quoted section 504(b-8) of the Illinois Marriage and Dissolution of Marriage Act (Act), a wholly new provision stating that, when reviewing a maintenance award, a court was empowered to "extend maintenance for further review, extend maintenance for a fixed non-modifiable term, extend maintenance for an indefinite term, or permanently terminate maintenance in accordance with subdivision (b-1)(A)(1) of this Section." 750 ILCS 5/504(b-8) (West Supp. 2017). As to the factors relevant to its decision, the trial court stated that it would consider the factors listed in sections 504(a) and 510(a-5) of the Act. 750 ILCS 5/504(a) (West 2016) (factors in setting an initial maintenance award); 750 ILCS 5/510(a-5) (West 2016) (additional factors when reviewing or modifying maintenance).

¶ 19 The trial court made the following findings of fact. The duration of the marriage was 17 years and 11 months when measured to the date of the petition for dissolution, and 19 years, 11 months when measured to the entry of the judgment of dissolution. Laura's income, including

the value of the in-kind landscaping services she received, was $38,000 to $40,000 per year, and she had assets worth about $782,709 (most of this was the equity in her home), plus a horse and a retirement account worth about $225,097. Michael's income had been above $4 million in each of the prior two years, and he had assets (including two homes) worth about $6.8 million and a retirement account of about $367,000.

¶ 20 Although the expert accountants had testified that Laura's living expenses were between $12,800 and $15,600 per month without accounting for taxes, the trial court found that these were expenses and not "needs" (the term used in the Act). Instead of adopting either of these figures, the trial court found that Laura's needs had "not changed substantially" since the entry of the MSA and the 2013 and 2015 agreed orders. (These set unallocated support at $12,000 per month when the youngest child was living at home, and $11,500 per month when he was not.) However, the trial court did not specifically identify any figure as representing Laura's needs. As to Michael, the trial court found that he had the ability to meet his needs and obligations.

¶ 21 As for the "realistic present and future earning capacity of each party" (750 ILCS 504(a)(3) (West 2016)), the trial court found that Michael's earning capacity was "substantial," as his yearly income would likely remain above $4 million until he retired. The trial court noted Michael's employer's mandatory retirement age of 67, noted that the firm did make exceptions to that policy, and found Michael's statement that he wished to retire at age 65 "credible." In evaluating Laura's present and future earning capacity, the trial court took into account Gordon's assessment that Laura could earn more if she were trained in AutoCAD. It therefore set her present earning capacity at $42,000 to $45,000. It found that her realistic future earnings would increase "nominally" over the next 10 years.

¶ 22 The trial court found that Laura's earning capacity had not been impaired by the years she devoted to domestic duties and that she had not forgone or lost any opportunity due to the marriage, noting that she was highly educated and had worked during the first part of the marriage. The trial court found that Michael's future earning capacity was impaired by his employer's mandatory retirement policy, which would kick in on August 14, 2024, when Michael turned 67.

¶ 23 Considering whether Laura needed additional time to gain any training necessary to maximize her earning capacity, the trial court found that she had already been allowed a reasonable amount of time for this. Nevertheless, Gordon had testified that Laura still needed training in AutoCAD, which could be accomplished through a community college or online class.

¶ 24 The trial court then turned to the standard of living enjoyed during the marriage. It began by stating that, although it had heard testimony about "vacations and eating out," it found this testimony "confusing, self-serving and not credible." The trial court found that the two largest expenses during the marriage were the marital home (now Laura's home) in Lake Forest and the horses. The trial court criticized Laura for seeking to remain in her home despite its expenses and although the children were no longer minors, and for continuing to own a horse, stating that these expenses were not reasonable and were not necessary to maintain the standard of living enjoyed during the marriage.

¶ 25 Regarding the statutory factors under section 504(a) of "any valid agreement of the parties," the tax consequences of the initial property distribution, and the contributions by Laura to Michael's education, career, or career potential, the trial court stated that these factors were inapplicable because this was "a second review."

¶ 26 The trial court then considered the statutory factors in section 510(a-5). Those factors, to the extent that they differed from the factors in section 504(a), included: any change in the employment status of either party and whether the change was made in good faith; the recipient's efforts to become self-supporting and whether those efforts were reasonable; the tax consequences of the maintenance payments; the duration of past maintenance payments relative to the length of the marriage; the present status of the property distributed to each party in the dissolution; any increase or decrease in the parties' incomes since the last order from which review was sought; and any property acquired by either party after the dissolution. See 750 ILCS 5/510(a-5) (West 2016).

¶ 27 The trial court recognized that, "to her credit," Laura was now employed full-time. However, the trial court criticized her employment efforts, stating that she "made a minimal effort" to maximize her employment opportunities, because she bartered for her employment for the first few years, did not apply for paid positions until 2013, and had not obtained training in AutoCAD. Although she had taken "some steps" to become self-supporting, she could earn more than she was currently earning. The trial court set the amount of her potential earnings at $42,000 to $45,000 per year. The trial court did not make any finding as to whether Laura would be self-supporting at this income level.

¶ 28 The trial court found that Michael had paid unallocated support for 9 years and 8 months. The total amount of such support was $1,701,687. The court expressly noted that "there were minor children" during much of the time Michael had been making these payments. The trial court found that the current tax rate on Laura's income including maintenance was 22%.

¶ 29 Lastly, the trial court addressed section 510(a-5)(9), which permits a court to consider "any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5)(9)

(West 2016). The trial court found that, by entering into the MSA and the 2013 and 2015 agreed orders, the parties "set the amount of support necessary to provide for Laura's needs and the amount necessary to maintain her standard of living." The trial court commented that, when the parties divorced in 2007 and unallocated support was set at $16,667 per month, Laura was not working and both children were living at home. At the time of the 2013 agreed order, when Laura was "still not working" and one child was emancipated, unallocated support was set at $12,000 per month. In 2015, with Laura working and one child at an out-of-state boarding school, unallocated support was set at $11,500. The trial court made no mention of the separate child support Laura received from 2005 through 2016.

¶ 30 The trial court then found that, in 2017, with Laura working and both children emancipated, the amount needed for her to meet her needs and maintain her standard of living was "less than $11,500." Taking her employment and her "ability to partially support herself" into account, the trial court found that Laura needed maintenance of $8,500 to meet her needs and maintain her standard of living. The trial court made no explicit finding regarding the length of time that Laura would still continue to need maintenance. However, it ordered that maintenance was "extended but reduced to $8,500 per month starting February 1, 2017, non-modifiable for a period of 7 years and 8 months." The trial court did not explain how it selected this particular period, or why it made maintenance nonmodifiable.

¶ 31 Laura moved for reconsideration and the trial court denied her motion. This appeal followed.[1]

[1] Although Michael filed a notice of cross-appeal, he later elected not to proceed with the cross-appeal. We note that, in his brief responding to Laura's appeal, Michael devotes significant time to arguing that Laura did not meet her burden of showing that she had "take[n]

¶ 32 II. ANALYSIS

¶ 33 On appeal, Laura argues that the trial court erred in making maintenance nonmodifiable, in failing to make maintenance permanent, and in reducing the amount of maintenance. We find that the trial court abused its discretion in denying Laura's request to make maintenance permanent. Accordingly, we need not resolve the issue of whether the trial court erred in making maintenance nonmodifiable. Instead, we remand for the court to consider the proper amount of permanent maintenance, applying the legal principles discussed herein.

¶ 34 Generally speaking, a trial court's decision regarding maintenance is reviewed for abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). An abuse of discretion occurs where no reasonable person would take the view of the trial court (*id*.) , where the trial court has applied an improper legal standard (*In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 31), or where the trial court's decision rests on an error of law (*People v. Olsen*, 2015 IL App (2d) 140267, ¶ 11).

¶ 35 A. Permanent (Indefinite) Maintenance

¶ 36 Laura argues that, rather than setting a nonmodifiable termination date for maintenance, the trial court should have made maintenance permanent. She argues that, given Michael's substantial financial resources and her inability to support herself in the lifestyle established during the marriage despite her employment, such maintenance was appropriate. She also contends that the trial court failed to apply the correct legal standard for this determination,

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appropriate actions to eliminate her alleged need of spousal support," as required by the MSA. However, the trial court's order extending maintenance was an implicit finding that Laura met this burden. Michael's failure to proceed with his cross-appeal prevents him from challenging that finding now. See *Norabuena v. Medtronic, Inc.*, 2017 IL App (1st) 162928, ¶ 36.

denying permanent maintenance solely on the ground that the parties did not "contemplate" such maintenance in their earlier dealings. Further, she contends that the trial court improperly disregarded the uncontradicted evidence regarding the standard of living enjoyed during the marriage. We agree.

¶ 37 1. Applicable Legal Standards and Principles

¶ 38 "Maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage." *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 24. Maintenance that is subject to review at set intervals is generally considered to be rehabilitative in purpose, providing a former dependent spouse with support while encouraging him or her to obtain the training and experience necessary to attain self-sufficiency. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004). "Permanent" maintenance is not truly permanent, as it can still be modified unless the parties agreed to nonmodifiability. See *In re Marriage of Bernay*, 2017 IL App (2d) 160583, ¶ 14. However, permanent maintenance is presumed to continue indefinitely, meaning that the parties need not return to court for periodic reviews unless one of the parties brings a motion to modify maintenance based on a substantial change of circumstances. *Id.* ¶ 15.

¶ 39 In this case, Laura initially received rehabilitative maintenance that was subject to review, and she was required "to take appropriate actions to eliminate her alleged need of spousal support from Michael within the applicable provisions of the [Act] and supporting case law." Under that case law, Laura's duty to work toward self-sufficiency was neither unlimited nor paramount. "The goal of *** financial independence 'must be balanced against a realistic appraisal of the likelihood that the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage,' and is thus not required

in all cases." *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 833 (1994) (quoting *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378 (1991)). That is because, regardless of a former dependent spouse's earning capacity, he or she is "entitled to continue to live in some approximation to the standard of living established during the marriage, unless the payor spouse's financial situation indicates otherwise." *Id*.

¶ 40 " '[W]here it is evident the recipient spouse is either unemployable or employable only at an income considerably lower than the standard of living established during the marriage,' " permanent (that is, indefinite) maintenance is appropriate. *Bernay*, 2017 IL App (2d) 160583, ¶ 14 (quoting *Dunseth*, 260 Ill. App. 3d at 833). "A former spouse is not required to lower the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet his needs and the needs of his former spouse." *Id*. ¶ 17 (internal quotation marks omitted). Although a court must consider a number of factors in deciding the appropriate duration of maintenance, indefinite maintenance is commonly granted where the parties have grossly disparate earning potentials (*id*.) and where the marriage was lengthy (*In re Marriage of Culp*, 341 Ill. App. 3d 390, 398 (2003)).

¶ 41 Notably, whether the parties contemplated an award of indefinite maintenance in their earlier dealings is not a determinative factor. If it were, indefinite maintenance could never be granted to a former dependent spouse receiving rehabilitative maintenance. But there is ample case law in which trial courts determined that spouses who were unable to match the marital standard of living despite good-faith efforts to become self-sufficient should receive indefinite maintenance. See, *e.g.*, *Bernay*, 2017 IL App (2d) 160583, ¶ 6 (on review of rehabilitative maintenance, trial court granted indefinite maintenance to former dependent wife); *Culp*, 341 Ill. App. 3d at 395 (same); see also *Golden*, 358 Ill. App. 3d at 471 (when reviewing maintenance,

trial court may, among other things, increase or change the terms of prior maintenance). Although the MSA here did not specifically provide for indefinite maintenance, it did not rule out such an award either. Thus, the trial court erred as a matter of law when it denied Laura's request for indefinite maintenance solely because it believed the parties had not contemplated such maintenance in their prior dealings.

¶ 42 2. The Marital Standard of Living

¶ 43 As explained above, when considering whether to grant indefinite maintenance, a court must determine the standard of living enjoyed by the parties during the marriage and compare that standard with the recipient's earning capacity. Here, however, the trial court departed from this analysis in several ways, beginning with its determination of the marital standard of living.

¶ 44 Although the parties characterized the marital standard of living in different ways, they agreed on its components, which included at a minimum one or two vacations involving travel each year, the maintenance of a large and comfortable house in Lake Forest, the keeping of a horse for Laura, and a new car for each spouse every three to five years. The income required to maintain this standard of living was substantial: Michael testified that it was a "stretch" for the family to operate on $500,000 per year. This was the standard of living that the trial court should have considered when determining whether indefinite maintenance was appropriate. The trial court rejected this evidence on the basis that it was "confusing, self-serving and not credible." But these comments are not supported by the record, which shows that the evidence regarding the marital standard of living was largely undisputed.

¶ 45 Instead of relying on the evidence, the trial court based its determination of the marital standard of living solely on the amount of unallocated support contained in prior court orders, finding that "the parties upon entering into a marital settlement agreement in 2007 and agreed

orders in 2013 and 2015 set the amount of support necessary to provide for Laura's needs and the amount necessary to maintain her standard of living." This was error. None of those orders contain any concession by Laura that the amount of unallocated support was sufficient, by itself, to meet her needs or provide her with the marital standard of living. To the contrary, when entering into these agreements, the parties were aware that Laura would have substantially more resources than just the unallocated support to draw upon in maintaining her household, as she was also receiving child support of approximately $127,000 per year. At most, the prior court orders simply reflected the amount of unallocated support that Michael agreed to pay and Laura agreed to accept at that point in time. The issues of Laura's personal financial needs and the amount necessary to maintain the marital standard of living never proceeded to an evidentiary hearing, and those issues were never factually determined. The trial court should not have disregarded the evidence introduced by the parties regarding the marital standard of living.

¶ 46 3. Application of the Correct Legal Standard

¶ 47 As we have noted, indefinite maintenance is properly granted when "it is evident that the recipient spouse is *** employable only at an income that is substantially lower than the previous standard of living." *Micheli*, 2014 IL App (2d) 121245, ¶ 18; see also *Dunseth*, 260 Ill. App. 3d at 833. The failure to award indefinite maintenance in these circumstances, especially following a lengthy marriage in which the recipient spouse devoted years to maintaining the household instead of pursuing a career, can be an abuse of discretion. See, *e.g.*, *Selinger*, 351 Ill. App. 3d at 615 ("where the facts are clear that one spouse is unable to support herself in the manner in which the parties lived during their marriage," indefinite or permanent maintenance is "necessary" and "[r]ehabilitative maintenance is an abuse of discretion"). We find that, under

the circumstances present in this case, an evaluation of the relevant factors under the correct legal standard supports an award of indefinite maintenance for Laura.

¶ 48 As Michael testified, the resources required to maintain the marital standard of living were substantial. The trial court found that Laura's earning capacity was between $42,000 and $45,000 per year, and that her income likely would increase only nominally in the future. Given this finding, it is incontestable that Laura will be unable to achieve the parties' marital standard of living through her own employment. Michael does not argue that he cannot afford to pay maintenance in an amount sufficient to achieve the marital standard of living. Under the analysis required by the applicable case law (a standard explicitly incorporated into section 2.2 of the parties' MSA), indefinite maintenance for Laura is thus appropriate. The trial court's failure to apply the correct legal analysis was an error of law and an abuse of discretion. *Heasley*, 2014 IL App (2d) 130937, ¶ 31; *Olsen*, 2015 IL App (2d) 140267, ¶ 11. We therefore reverse its denial of indefinite maintenance.

¶ 49 B. Amount of Maintenance

¶ 50 Having found that the trial court erred in denying indefinite maintenance, we are left with the question of the appropriate amount of that maintenance. This is a determination that should be made in the first instance by the trial court, and we therefore remand for the trial court to make that determination. However, we point out certain errors that the trial court should avoid repeating.

¶ 51 As we have noted, the trial court erred in viewing the parties' prior agreements as a measure of the marital standard of living or Laura's personal needs. On remand, the trial court must look to the evidence presented by the parties on those issues, including the testimony of the parties' expert witnesses regarding Laura's adjusted monthly living expenses. Although these

experts differed slightly in their methods and their ultimate conclusions, the expenses they documented ranged from a low of $12,800 (Belmonte-Newman) to $15,600 (Schroeder) per month, net of taxes.

¶ 52 The trial court also criticized Laura for seeking to stay in the marital home and for continuing to keep a horse, finding that this was not within her "reasonable" needs. We acknowledge that the costs of these items are substantial and that Laura's standard of living is above that enjoyed by most people. Nevertheless, this does not make her standard of living "unreasonable." When determining the amount of maintenance, "[t]he reasonable needs of the party seeking maintenance are to be measured by the standard of living the parties enjoyed during the marriage." *In re Marriage of Keip*, 332 Ill. App. 3d 876, 880 (2002). The trial court did not identify any areas in which Laura's expenses included items beyond the marital standard of living. To the contrary, the undisputed evidence established that both of the expenses the trial court criticized Laura for seeking to maintain—her home and her horse—were part of the standard of living enjoyed by the parties during the marriage. Further, Laura testified that she could no longer afford to pay for other items that were part of the marital standard of living, such as occasional home repairs and vacations.

¶ 53 The trial court also erred in suggesting that Laura should sell her home and stop keeping a horse in order to live more economically. "Illinois law is clear that [a recipient of maintenance] is not required to liquidate assets in order to generate income to live on." *Id*. at 882. To the contrary, "[a] former spouse is not required to lower the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet his needs and the needs of his former spouse." *Bernay*, 2017 IL App (2d) 160583, ¶ 17 (internal quotation marks omitted)). As Michael has not shown that he lacks the assets to meet the needs of both

Laura and himself, the trial court should not have suggested that Laura divest herself of assets in order to live more economically.

¶ 54 Finally, Laura argues that certain other findings of the trial court were against the manifest weight of the evidence. For instance, she challenges the trial court's finding that her earning capacity had not been impaired by the time she was out of the workforce in order to devote herself to domestic duties was against the manifest weight of the evidence. See 750 ILCS 504(a)(4) (West 2016). We agree that the evidence was undisputed that Laura put her career on hold in order to raise the children and maintain the marital home. Common experience would suggest that this had at least some negative effect on her earning capacity. We also note that it appears that Laura contributed to the repayment of Michael's student loans, given that they were paid off while she was working outside the home. See *id*. § 504(a)(12). Further, we agree with Laura that section 504(a) requires the trial court to consider the amounts necessary for Laura to pay her taxes when determining the appropriate amount of maintenance. *Id*. § 504(a)(11). Lastly, we note the trial court's focus on the fact that the children no longer resided with Laura, which it used to justify a decrease in the amount of maintenance. This focus was improper, as the additional child support formerly paid by Michael contributed to the children's upkeep and Laura is no longer receiving this income stream. On remand, the presence or absence of children in the home should not be central. Rather, the focus must be on determining the amount necessary for Laura to live at the level enjoyed by the parties during the marriage, as required by the law. See *Micheli*, 2014 IL App (2d) 121245, ¶ 24.

¶ 55 C. Section 504(b-8) of the Act

¶ 56 Before concluding, we note that the parties devote much of their argument on appeal to the question of the proper interpretation of section 504(b-8) of the Act, and whether the trial

court erred in relying on that provision to enter a nonmodifiable end date for maintenance. However, we need not resolve this issue, as we have held that the trial court abused its discretion in denying indefinite maintenance under the uncontroverted evidence here. This holding would be the same regardless of our interpretation of section 504(b-8).

¶ 57 Although our disposition here ultimately does not rest on statutory construction, we urge the parties and the trial court to engage in careful consideration of principles of statutory construction, not merely assumptions, when applying the recent amendments to the Act in future cases. For instance, in this case neither the parties nor the trial court ever discussed whether section 504(b-8), which did not take effect until January 1, 2017, should be applied retroactively to Laura's pending petition, which was filed in 2016. Although the parties and the court assumed that retroactive application was proper, this is by no means obvious. See generally *In re Marriage of Benink*, 2018 IL App (2d) 170175, ¶¶ 27-30 (discussing the applicability of the 2016 amendments to the Act in proceedings commenced before the effective date of those amendments); Schroeder, B., "The Illinois Spousal Maintenance Law: Retroactive or Prospective?", 103 Ill. B.J. 32, 35 (January 2015); see also *In re Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 35 (declining to address the proper interpretation of section 504(b-8) because it did not become effective until after the petition at issue was filed, and the husband failed to cite any authority that it applied). We believe that thoughtful consideration of these matters in future cases will assist the trial court by clarifying the law to be applied.

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, the judgment of the circuit court of Lake County is reversed and remanded for further proceedings consistent with this order.

¶ 60 Reversed and remanded.