

NOTICE

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2015 IL App (5th) 140005-U

NO. 5-14-0005

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

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

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
STACY A. SCHOEMAKER,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-343
	)	
DONALD K. SCHOEMAKER,	)	Honorable
	)	Randall W. Kelley,
Respondent-Appellant.	)	Judge, presiding.

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JUSTICE SCHWARM delivered the judgment of the court.  
Justices Stewart and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court properly determined child support and maintenance amounts awarded to wife.

¶ 2 The respondent, Donald K. Schoemaker, appeals an order entered in the circuit court of St. Clair County awarding the petitioner, Stacy A. Schoemaker, child support and maintenance. Donald requests that we decrease his child support obligation and decrease or disallow Stacy's claim for maintenance, which, Donald argues, we should properly characterize as "rehabilitative" for purposes of later review. For the reasons set forth below, we affirm the judgment of the circuit court.

¶ 3

## I. BACKGROUND

¶ 4 The parties were married on December 24, 1997. Together, they have one child, Samuel Schoemaker, who was born on February 9, 2002, and who is autistic. The parties separated during the summer of 2008, when Stacy moved into her own home approximately 100 yards away from the former marital home, where Donald continued to reside. On April 20, 2011, Stacy filed a petition for dissolution of marriage. On April 3, 2012, following mediation, the parties resolved issues of property distribution and child custody pursuant to a joint parenting agreement and marital settlement agreement. On May 17, 2012, the circuit court entered a judgment of dissolution of marriage and approved the terms of the joint parenting agreement and marital settlement agreement.

¶ 5 In the joint parenting agreement, the parties agreed to share joint custody of Samuel, with Stacy being the primary residential parent. The parties agreed to alternative physical custody of Samuel on a daily basis Monday through Thursday. They also agreed to alternate physical custody of Samuel on weekends and holidays.

¶ 6 In the marital settlement agreement, the parties reserved the issue of maintenance for a determination by the court. The parties also reserved the amount and payment of child support for a determination by the court. However, Donald agreed to pay child support of \$1,700 per month until permanently ordered by the court. Donald also agreed to provide health insurance for Samuel and to pay all out-of-pocket expenses for Samuel's medical, dental, orthodontic pharmaceutical or ophthalmologic, and other health-care related expenses. Donald also agreed to pay 50% of Samuel's extracurricular and after-school ("latch key") expenses. The parties agreed that "any potential award of child

support or maintenance shall be prospective and effective[ ] from May 1, 2012[,] onward."

¶ 7 In the marital settlement agreement, Donald was awarded the marital residence, and Stacy was awarded her residence. Donald agreed to pay Stacy \$131,000 to balance the value of assets awarded to each party. Donald was further awarded his ABA Retirement Fund but agreed to roll over \$150,000 from the account to Stacy. To equalize the pension benefits awarded to each party, Donald agreed to pay Stacy \$75,000.

¶ 8 When Stacy petitioned for dissolution of marriage, she was 43 years old, and Donald was 47 years old. On June 21, 2013, at the hearing on the remaining issues of child support and maintenance, Stacy testified that she graduated from the paralegal studies program at Southern Illinois University in 1990. After graduation, Stacy worked full-time with Donald as a litigation paralegal in metro east- and St. Louis-based law firms from 1990 to 1994 and from 1996 to 2000. Stacy testified that she worked evenings and weekends as a litigation paralegal. She was terminated from her full-time position in 2000 due to the loss of business. When she last worked as a full-time paralegal in 2000, her salary was approximately \$39,000. Stacy worked briefly as a paralegal in 2006, but she did not like that particular job, characterizing it as primarily secretarial. Stacy testified that she and Donald had discussed whether she should continue in the paralegal field, and Donald had indicated that the pay was not commensurate with the amount of responsibility and extensive work hours required. Stacy testified that she had therefore chosen not to seek further work in the paralegal field.

¶ 9 During the summer of 2008, Stacy began working as a manager of a fitness center. In 2009, she initially earned \$16,000 annually, but her salary was reduced to \$12,000 in 2010, and she voluntarily quit her employment in December 2010, citing a reduction in hours. Stacy had not worked or sought employment since December 2010.

¶ 10 In the fall of 2011, Stacy enrolled in a master's degree program for professional career counseling at Lindenwood University in Belleville. Stacy testified that professional career counselors earn between \$35,000 and \$50,000 per year and the corresponding employment hours would allow her to be present after school for Samuel. Stacy testified that she had finished the three-year program in a year and a half and that she was scheduled to graduate in July 2013. Stacy testified that the program was comparable to full-time employment.

¶ 11 Stacy's December 5, 2012, financial statements revealed monthly expenses of \$7,841 per month, \$2,191 related to child care and \$1,521 related to Stacy's educational expenses, which would terminate soon after the hearing. Thus, as of July 1, 2013, her monthly expenses would be \$6,320. At the time of the hearing, Donald was paying the agreed-upon \$1,700 a month in child support. Stacy testified that Donald's child support was her only source of income. Stacy testified that because she incurred monthly expenses greater than her income, she had been paying expenses with funds she received pursuant to the parties' marital settlement agreement.

¶ 12 Stacy acknowledged that pursuant to the marital settlement agreement, the parties had divided the marital assets equally. Stacy testified that she had \$78,000 equity in her home and that in May 2012, she purchased a new \$38,000 Buick LaCrosse, in which she

had \$7,000 equity. Stacy also acknowledged that the parties shared Samuel's extracurricular and latch key expenses. Stacy testified that latch key expenses alone were \$400 per month. Stacy testified that Samuel spends more time with her than with Donald, due to Donald's employment. Stacy testified that she had physical custody of Samuel every day after school.

¶ 13 Donald testified that he worked as a practicing attorney in the Belleville area since 1988. Donald testified that he owned his \$200,000 home mortgage-free. Donald testified that he also owned his motorcycle debt-free. Donald acknowledged that in 2012, he contributed \$17,000 to his 401(k) retirement account and in 2013, he contributed \$23,000. Donald's financial statement revealed monthly household expenses of \$7,232 per month, including \$1,587 related to Samuel. Donald testified that he also provided financial assistance to his adult children.

¶ 14 Donald's December 31, 2012, pay stub revealed year-to-date earnings of \$288,000. Donald's 2012 tax return information revealed that he owed \$64,392 in federal taxes. His June 14, 2013, pay stub indicated 2013 year-to-date earnings of \$207,957.41. Donald testified that he expected his income in 2013 to be similar to his income in 2012. Donald testified, however, that his employer's year-end distributions, made in January of the following year, can vary greatly based upon the income of the firm for the prior year. Donald testified that these year-end distributions have varied over the years from additional capital calls (paying money back in at the end of the year) to positive distributions.

¶ 15 Donald presented attorney Jim Williams to testify as an expert regarding the paralegal profession. Williams testified that as a paralegal, Stacy could have been earning between \$35,000 and \$45,000 in the Belleville area and \$40,000 to \$50,000 if she were employed in St. Louis. Williams acknowledged that candidates with paralegal degrees had applied in the recent past to lesser-paying legal secretary positions at his law office.

¶ 16 On July 18, 2013, the circuit court entered an order awarding Stacy \$3,253 monthly child support and \$2,000 monthly maintenance, retroactive to May 1, 2012. The circuit court found that Stacy and Samuel incurred reasonable expenses of \$7,841 per month from May 2012 through and including July 2013. Subsequent to July 2013, the court determined that Samuel and Stacy would reasonably incur expenses of \$6,320 per month. The circuit court noted that Stacy's needs subsequent to July 2013 would be reduced because she would no longer be attending Lindenwood University. The circuit court found that Donald and Samuel incurred reasonable expenses of \$7,232 per month.

¶ 17 The court "note[d] that although the [j]oint [p]arenting [a]greement provide[d] for a 50/50 sharing of custody between the parties, [Stacy] [wa]s the primary caregiver for the minor child based upon the fact that [Donald] work[ed] extensive hours as \*\*\* a litigation attorney." The court further noted that Stacy's educational expenses were paid directly by her from assets awarded to her in the judgment of dissolution of marriage.

¶ 18 In its order, the circuit court calculated Donald's monthly net income as \$16,005 in 2012 and anticipated Donald's monthly net income in 2013 as \$16,528. The circuit court

averaged Donald's monthly income from 2012 and 2013 as \$16,267 and accordingly established child support at \$3,253 per month, retroactive to May 1, 2012.

¶ 19 The circuit court found that maintenance was appropriate because Stacy was employable only at an income that would not provide her with the approximate standard of living enjoyed during the marriage. The court noted that Donald's income would still be four to five times that of Stacy's once Stacy was employed on a full-time basis. The circuit court thus ordered Donald to pay Stacy \$2,000 per month for maintenance, effective May 1, 2012. The circuit court held that the award of maintenance shall be subject to modification upon a change of circumstances, shall not be deemed permanent, and shall be subject to review after August 1, 2014.

¶ 20 On August 16, 2013, Donald filed a motion to reconsider and/or clarify, which the circuit court denied on December 5, 2013. On January 3, 2014, Donald filed a timely notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 Donald argues that the circuit court miscalculated his monthly net income to determine his maintenance and child support obligations. In its order, the circuit court considered Donald's monthly net income in 2012 as \$16,005 and his monthly net income in 2013 as \$16,528, calculated a monthly net income of \$16,267 by averaging these amounts, and ordered child support of \$3,253, retroactive to May 1, 2012, based on this average. The circuit court also ordered Donald to pay \$2,000 per month as and for maintenance to Stacy effective May 1, 2012.

¶ 23 "In Illinois, the support of a child is the joint and several obligation of both the husband and the wife." *In re Marriage of Turk*, 2014 IL 116730, ¶ 14. "If the couple's marriage dissolves, the court may apportion child support obligations between them." *Id.* "The standards governing court-awarded child support are set forth in section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505 (West 2012))." *Id.* Pursuant to section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (Act), effective at the time of the parties' trial court proceeding, "net income" was defined as "the total of all income from all sources," minus "properly calculated" federal and state income tax, social security, mandatory retirement contributions, union dues, dependent and individual health/hospitalization insurance premiums and qualifying life insurance premiums, prior obligations of support or maintenance actually paid pursuant to a court order, expenditures for repayment of qualifying debts, and foster care payments. 750 ILCS 5/505(a)(3) (West 2012).

¶ 24 The relevant focus for determining income under section 505 of the Act "is the parent's economic situation at the time the child support calculations are made by the court." *In re Marriage of Rogers*, 213 Ill. 2d 129, 138 (2004). "[I]n determining income for child support purposes, the trial court has the authority to compel a party to pay at a level commensurate with his earning potential." *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 26. "Although child support is the obligation of both parents, if one parent earns a disproportionately greater income than the other he or she should bear a larger share of the support." *Id.* ¶ 35. "If present income is uncertain, the trial court may impute income to the payor." *Id.* ¶ 26. "The trial court's determination of child support



will not be reversed absent an abuse of discretion." *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 60.

¶ 25 The evidence supported the circuit court's order. Donald's 2012 tax information revealed gross earnings of \$288,880. Subtracting the appropriate deductions for federal taxes, state taxes, social security, Medicare, and health insurance yielded a yearly net income of \$192,064 and a monthly net income of \$16,005 per month. Donald's June 15, 2013, pay stub revealed year-to-date taxable earnings of \$207,957. To determine child support, Stacy reasonably projected, and the circuit court accepted, Donald's 2013 yearly gross income as \$292,874, his yearly net income as \$198,341, and his monthly net income as \$16,528. Averaging his monthly net income between 2012 and 2013, the circuit court calculated his child support obligation at \$3,253, 20% of the averaged amount of \$16,267. Pursuant to these calculations, the circuit court further calculated maintenance at \$2,000 per month, approximately 12.3% of the averaged amount. By determining Donald's income as evidenced by pay stubs and tax return information, the circuit court acted within its authority to estimate his income for child support and maintenance purposes. See *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 26.

¶ 26 Donald further argues that the circuit court erred when it considered amounts he received as income prior to May 1, 2012, to calculate Donald's salary for purposes of child support and maintenance to be paid between May and December 2012. Donald argues that his pre-May 1, 2012, earnings were included in the marital settlement agreement's division of assets. Donald argues that by considering his pre-May 2012

income to calculate his post-May 2012 child support and maintenance obligations, the circuit court failed to enforce the terms of the marital settlement agreement.

¶ 27 The marital settlement agreement reads in pertinent part:

"The parties agree that any potential award of child support or maintenance shall be prospective and effective, from May 1, 2012 onward. The parties agree that Donald shall have the tax exemption for the minor child until further order of Court. The parties shall share equally any extracurricular expenses and latch key expense for Sam."

¶ 28 We recognize that the marital settlement agreement divided the assets of the parties as of May 1, 2012, and these assets would have included his income up to that date. We also recognize, however, that Stacy agreed to forego maintenance or the court-ordered amount of child support prior to this same date.

¶ 29 We reject Donald's contention that in considering his 2012 income, including his yearly dividend check payable prior to May 2012, to calculate child support and maintenance, the circuit court violated the marital settlement agreement. As noted by Stacy, nothing in the plain language of the agreement indicated that Donald's net income for child support or maintenance calculations was limited to income earned subsequent to May 1, 2012. The marital settlement agreement provided only that the award of child support or maintenance would be effective from May 1, 2012, onward, which was consistent with the circuit court's order.

¶ 30 Donald further argues that the circuit court committed a mathematical error in calculating child support, suggesting that the circuit court should have deducted the

maintenance awarded by the court before calculating the child support amount. Although section 505(a)(3) was amended after the parties' dissolution to include a deduction for "maintenance in the pending proceeding actually paid or payable under Section 504 to the same party to whom child support is to be payable" (Pub. Act 98-961, § 5 (eff. Jan. 1, 2015) amending 750 ILCS 5/505(a)(3)(g-5) (West 2012))), only "[p]rior obligations of support or maintenance actually paid pursuant to a court order" was an enumerated deduction of net income at the time of the circuit court's judgment of dissolution of marriage (750 ILCS 5/505(g) (West 2012)). Thus, we find that the circuit court did not err in failing to deduct its current order of maintenance from Donald's gross income prior to calculating child support.

¶ 31 Donald also argues that the circuit court erred in determining his child support obligation because it improperly failed to consider that Donald shares physical custody of Samuel, that Donald is responsible for all of Samuel's out-of-pocket medical expenses, and that Donald pays 50% of Samuel's other expenses, including Samuel's latch key and extracurricular activity expenses.

¶ 32 Section 505(a) of the Act sets forth guidelines for the minimum amount of support (as a percentage of the supporting party's net income) according to the number of children involved. 750 ILCS 5/505(a) (West 2012). "The guidelines create a rebuttable presumption that child support conforming to the guidelines is appropriate." *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 28. Pursuant to the Act, a parent owing a duty to pay support should pay 20% of his monthly net income for child support for one child. 750 ILCS 5/505(a)(1) (West 2012).

¶ 33 When child custody is shared, however, a strict mathematical application of the guidelines is not contemplated by the statute. *In re Marriage of Keown*, 225 Ill. App. 3d 808, 812 (1992). "[T]he court may apportion the percentage between the parents or disregard the statutory guidelines and instead consider the factors listed in section 505(a)(2) of the Act." *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 59; *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 708-09 (1996). The factors enumerated in section 505(a)(2) include: (1) the financial resources and needs of the child; (2) the financial resources and needs of the custodial parent; (3) the standard of living the child would have enjoyed had the marriage not been dissolved; (4) the physical, mental, and emotional needs of the child; (5) the educational needs of the child; and (6) the financial resources and needs of the noncustodial parent. 750 ILCS 5/505(a)(2) (West 2012).

¶ 34 Moreover, "[n]othing in this nonexclusive list of factors makes custody dispositive." *In re Marriage of Turk*, 2014 IL 116730, ¶ 18 (Illinois law does not confine the obligation to pay child support to noncustodial parents). "Rather, the statute makes clear that a range of considerations may affect the court's assessment, including the means, needs and capacity to produce income of both parents, custodial and noncustodial alike, with the ultimate objective of serving the best interest of the child." *Id.* "Section 505(a) was intended to protect the rights of children to be supported by their parents in an amount commensurate with the parents' income." *Id.* ¶ 25.

¶ 35 The circuit court considered the factors in section 505(a)(2) of the Act in reaching its decision regarding Donald's child support obligations. The circuit court considered Stacy and Samuel's reasonable needs of \$6,320 per month after July 2013. The circuit

court found that Donald enjoyed a surplus of income over expenses, before the payment of any child support, in the amount of \$9,035 per month. The circuit court concluded that while Donald's financial condition had improved, Stacy's assets had continued to diminish.

¶ 36 The circuit court found that the standard of living Samuel would have enjoyed had the marriage not been dissolved involved an affluent lifestyle with luxury vehicles, extensive travel, and unlimited spending by both parties. The circuit court found that Donald had been able to maintain his residence valued at \$200,000 and to pay off the debt on the residence, in addition to making substantial contributions on the average of \$1,667 per month to his retirement accounts during the pendency of the proceedings. The circuit court found that Donald had retained all of the assets necessary to allow him to continue the lifestyle he had enjoyed during the marriage. The circuit court noted that during the same period of time, Stacy was required to reduce the value of the assets awarded to her in order to pay her monthly expenses. The circuit court further found that Stacy was employable at a much lower income level as compared to Donald and that she would not earn sufficient income to approach the standard of living she had enjoyed during the marriage. The court further found that although the joint parenting agreement provided for a 50/50 sharing of custody, Stacy was Samuel's primary caregiver due to Donald's extensive work hours as a litigation attorney.

¶ 37 Although the circuit court's order revealed an intention for Donald to pay 20% of his net income, which is the statutory guideline for the support of one child, the circuit court reviewed the factors in section 505(a)(2) to determine Donald's child support

obligation. We therefore distinguish *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 67, which Donald cites to argue that the circuit court improperly awarded the statutory amount. In *In re Marriage of Smith*, the appellate court held that the circuit court had abused its discretion in ordering a parent who shared custody of a child to pay the statutory guideline amount of 20% of the parent's monthly net income because the circuit court had failed to review the factors in section 505(a)(2) of the Act. *Id.* Here, the circuit court clearly considered the factors in section 505(a)(2) of the Act in reaching its decision regarding Donald's child support obligations. We find no abuse of discretion.

¶ 38 Donald argues that the circuit court abused its discretion in awarding Stacy \$2,000 maintenance because her standard of living had not diminished and because Stacy remained voluntarily unemployed, intentionally choosing not to work since December 2010.

¶ 39 The Illinois Marriage and Dissolution of Marriage Act allows for both temporary and permanent maintenance awards. 750 ILCS 5/504(a) (West 2012) ("court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just"). "As a general rule, '[m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent.' " *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008) (quoting *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 708 (2006)). " 'Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living.' " *Id.* (quoting *In re Marriage of Samardzija*, 365 Ill. App. 3d at 708). "Ultimately, a maintenance award, whether it is temporary or

permanent, must be reasonable [citation] and what is reasonable depends upon the facts of each individual case [citation]." *Id.*

¶ 40 Section 504(a) of the Act (750 ILCS 5/504(a) (West 2012)) sets forth the factors for the trial court to consider when determining the amount of a maintenance award. "The benchmark for determination of maintenance is the reasonable needs of the spouse seeking maintenance in view of the standard of living established during the marriage, the duration of the marriage, the ability to become self-supporting, the income-producing property of a spouse, if any, and the value of the nonmarital property." *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 972 (1992). However, the parties' financial resources will normally dictate whether they can maintain their predissolution lifestyle when living in separate households after divorce. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 773 (1998). Accordingly, a spouse is entitled to maintenance in an amount sufficient to maintain the standard of living the parties enjoyed during the course of the marriage if the providing spouse has the means to provide for the other spouse without compromising his own needs. *Id.* at 774.

¶ 41 Section 504(a) of the Act provides that a court may grant permanent or temporary maintenance upon consideration of "all relevant factors," including:

- "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement between the parties; and

(12) any other factor that the court expressly finds to be just and equitable."

750 ILCS 5/504(a) (West 2012).

¶ 42 In considering the aforementioned factors, the trial court is not required to give them equal weight so long as the court strikes a balance that is reasonable under the circumstances. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293 (2010). No one factor



is determinative of the propriety of the maintenance award once it has been determined that an award is appropriate. *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 46.

¶ 43 Moreover, "[c]ourts have wide latitude in considering what factors to use in determining reasonable needs, and the trial court is not limited to the factors listed in the Act." *Id.* The trial court's determination regarding an award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d at 292. "The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it was an abuse of discretion." *Id.* "An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court." *Id.* "The party seeking reversal of a maintenance award bears the burden of showing the trial court abused its discretion." *Id.*

¶ 44 Donald and Stacy were married for approximately 15 years. Stacy did not work continuously during the final 12 years of the marriage. She cared for Samuel and performed other domestic duties. Although Stacy recently received a master's degree in career counseling, Donald has a greater present and future potential to earn income and acquire assets.

¶ 45 During the dissolution proceeding, Donald maintained his residence valued at \$200,000, paid the corresponding debt, and made substantial contributions averaging \$1,667 per month to his retirement accounts. In addition to his living expenses and the \$1,700 paid to Stacy, Donald paid an additional \$915 per month for the benefit of his two adult children. Donald retained his assets, continuing the lifestyle he enjoyed during the marriage, while Stacy's payment of her monthly expenses resulted in the diminishment of

her assets. Donald earns \$16,267 monthly net income and was ordered to pay Stacy \$2,000 per month, representing approximately 12.3% of his net income. We find that the circuit court's maintenance award was reasonable. See *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691, 695 (1998) (award of maintenance constituting 15% of payor's monthly income held to be reasonable). Based on the evidence presented to the circuit court, we cannot find that the circuit court abused its discretion in ordering Donald to pay monthly maintenance of \$2,000 and monthly child support of \$3,253.

¶ 46 Donald also argues that the circuit court erred in failing to set forth in its order which party bears the burden of proof in August 2014, when maintenance is reviewable.

¶ 47 In its order, the circuit court provided as follows:

"The award of maintenance \*\*\* shall be subject to modification upon a change in circumstances and shall be terminable pursuant to the terms of the [Act]. Further \*\*\* the award of maintenance \*\*\* shall not be deemed 'permanent' and shall be subject to review after August 1, 2014."

¶ 48 Generally, all maintenance awards are reviewable and may be modified or terminated upon a "showing of a substantial change of circumstances." *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 617-18 (2004). "The distinction between 'permanent' and 'temporary' maintenance is a fine one, amounting, in essence, to the burden of proving a change in circumstances to justify the termination or modification of 'permanent' maintenance shifting to the paying party." *In re Marriage of Culp*, 341 Ill. App. 3d 390, 397 (2003); *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 770 (2000) (the only

difference between an award of permanent maintenance with no provision for review and a fixed award reviewable after a period of years is the placement of the burden of proof).

¶ 49 Thus, the party seeking to modify or terminate a permanent maintenance award generally has the burden of proving a substantial change in circumstances. 750 ILCS 5/510(a-5) (West 2012). Where a maintenance award is reviewable by its terms after a period of years, on the other hand, the party seeking a modification after the period has run has no such burden. *Blum v. Koster*, 235 Ill. 2d 21, 35-36 (2009). Instead, upon review, the court has the discretion to continue maintenance or to modify or terminate maintenance. *Id.* at 36.

¶ 50 The circuit court's order provides for a general review of maintenance on August 1, 2014. Accordingly, Donald does not have the burden of proving a substantial change in circumstances at that time. See *In re Marriage of Golden*, 358 Ill. App. 3d 464, 472 (2005) ("the moving party in review proceedings [held pursuant to prior court order] does not have the burden of proving a substantial change in circumstances"). Nevertheless, Stacy may seek an extension of the maintenance award by showing that a continuation of maintenance is necessary at the end of the fixed term. See *Blum*, 235 Ill. 2d at 36. Accordingly, the circuit court considers the factors in sections 504(a) (750 ILCS 5/504(a) (West 2012)) and 510(a-5) (750 ILCS 5/510(a-5) (West 2012)) (providing additional factors for the trial court to consider in determining whether modification or termination of maintenance is warranted) to determine whether to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms. See *Blum*, 235 Ill. 2d at 35-36; *In re Marriage of Golden*, 358 Ill. App. 3d at 471.

Having reviewed the applicable law, we find that clarification of the circuit court's order is unnecessary.

¶ 51

### III. CONCLUSION

¶ 52 For the reasons stated, we affirm the judgment of the circuit court of St. Clair County.

¶ 53 Affirmed.