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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
CYNTHIA A. KUNOWSKI,)	of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 02-D-2400
)	
MICHAEL A. KUNOWSKI,)	Honorable
)	Brian R. McKillip,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not err in denying the respondent's petition to terminate maintenance or in granting the petitioner's requests for attorney fees and costs.

¶ 1 The respondent, Michael Kunowski, appeals from a trial court order dismissing his petition to terminate the petitioner's, Cynthia Kunowski's, right to receive maintenance pursuant to the parties' marital settlement agreement. Michael also appeals from orders granting Cynthia's requests for contribution toward her attorney fees and granting her interim attorney fees for this appeal. We affirm.

¶ 2

I. BACKGROUND

¶ 3 Cynthia and Michael were married on June 21, 1980. Three children were born to the parties: Jason, born April 1, 1983; Jacob, born May 29, 1985; and Joshua, born December 12, 1988. A judgment for dissolution of marriage was entered on May 20, 2004. The judgment incorporated a marital settlement agreement (Agreement). The Agreement provided, in part, that Michael would pay Cynthia “as and for reviewable maintenance” \$800 per month for a period of 48 months “commencing on the effective date of [the] Agreement,” which was May 18, 2004. The Agreement specified that “the maintenance obligation *** [was] more permanent in nature.” The Agreement also provided that the parties would be responsible for their children’s college or vocational school expenses “in accordance with the provisions of Section 513 of the Illinois Marriage and Dissolution of Marriage Act” (Act) (750 ILCS 5/513 (West 2004)).

¶ 4 On May 5, 2008, Cynthia filed a petition for an extension of maintenance. On January 27, 2009, an agreed order was entered that provided Michael would pay Cynthia \$500 per month “as and for reviewable maintenance” for a period of 48 months commencing June 3, 2008. The agreed order also provided that Michael would be solely responsible for the children’s educational expenses.

¶ 5 On June 30, 2010, Michael filed a petition to terminate maintenance on the basis that Cynthia was living with someone on a resident, continuing conjugal basis. On August 6, 2010, Cynthia filed a petition for interim attorney fees and costs based on the disparity in the parties’ incomes. On November 15, 2010, following a hearing, the trial court ordered Michael to pay \$3,000 to Cynthia’s attorney “as and for past and prospective attorney’s fees [and] costs, without prejudice and potentially subject to reapportionment.”

¶ 6 On December 20, 2010, Michael filed an amended two-count petition to terminate maintenance. In that petition Michael argued that maintenance should be terminated on the basis that Cynthia was living with someone on a resident, continuing conjugal basis (count I). Alternatively, Michael argued that termination of maintenance was warranted based on a substantial change in circumstances in that Cynthia's income had increased 20% and her boyfriend had purchased a home for her.

¶ 7 A hearing was held on Michael's amended petition to terminate maintenance on January 24, March 30, and March 31, 2011. Cynthia testified that she lived by herself in a townhouse owned by her boyfriend, Don Cislo, in Bartlett. She paid Cislo monthly rent. She started looking for a new residence in May 2008. After she looked at her Bartlett townhouse, she suggested to Cislo that he buy the home, as an investment, and rent it to her. She was trying to minimize her house payment. Her current monthly rent (\$994) was an amount equal to the property taxes and three percent of the cost of the home. She also paid the monthly association fee (\$210) and her utility bills.

¶ 8 Cynthia testified that she first met Cislo in 2001 at the health club where she worked as a personal trainer. She and Cislo were both married at the time. At that point their relationship did not go beyond a friendly "hello." In 2002, she became Cislo's personal trainer. She trained him for ten weeks, one session per week. After that, they became friends. They did not go out or have sexual relations, but they would occasionally talk on the phone. She acknowledged that Cislo gave her 18 \$25 gift certificates to Woodfield Mall in December 2002 and he had purchased her a "Tag" watch that may have cost in excess of \$1,000. These were birthday presents for her. She generally received a birthday gift from him every year. In 2003, she and Cislo became "good friends." She

did not recall having sexual relations with him in 2003 but they did more than talk on the phone. She did not recall if she went out to dinner or had sexual relations with Cislo in 2004.

¶ 9 In 2005, she and Cislo were still good friends. At that time she lived in a townhouse in Carol Stream with her youngest son Joshua, who was then 17 years old. Joshua was on medication. He was diagnosed with schizoaffective disorder and depression. When Joshua turned age 18, he started to spend more time at his father's place and eventually moved in with his father. In 2006, she and Cislo were "dating." Cislo had four children. His youngest daughter, Valerie, was 16 years old and lived with her mother. Jenny, who was 18 years old, went to college in Nashville. Cislo also had two sons, Donny, who was 27 years old, and Ryan, who was 22 years old.

¶ 10 She and Cislo had taken many vacations together. When they vacationed together, they stayed in the same hotel room. Cislo generally paid for the vacations. In June 2005, they went to the Bahamas together. Since then, they had traveled to Washington D.C., Jamaica, Wyoming, Florida, Hawaii, Wisconsin, Minnesota, and Texas. The trips to Washington D.C. and Jamaica were in 2008. They were both weekend trips. They went to Wyoming for a week about two or three years prior. In November 2008, January or February 2009, December 2009, and January 2011, they went to Florida. They traveled to Hawaii in June 2007 or 2008 and stayed for a week. They went to California together in 2007. They traveled to the Upper Peninsula of Michigan a couple of times.

¶ 11 She had been on vacation with Cislo in Mexico the previous week. In the year 2010, she recalled traveling with Cislo once to San Antonio, Texas, for her nephew's graduation from the Air Force. Cislo accompanied her to her various family celebrations and dinners. They also went out to dinner with a friend of Cislo's who lived in San Antonio. She believed that she had paid for the flights and hotel costs for the San Antonio trip. She and Cislo went to New York in September

2010. She also recalled a trip with Cislo to a town north of Minneapolis, Minnesota in 2009. They drove there for an anniversary party for one of Cislo's friends. They were there for three days and stayed in a hotel. While there, they also saw Cislo's mother and sister and the sister's family. She and Cislo went out to dinner with Cislo's family.

¶ 12 Cynthia further testified that the amount of time she spent with Cislo fluctuated from week to week. She did not see him every day. They used weekends as date nights. They usually went out to eat or to see a movie. Sex was highly important to their relationship. When Cislo was first divorced, his two daughters lived with him during his scheduled visitation. Additionally, his daughter Jenny had lived with him continuously for about three years. Jenny had moved out about a year prior. She had seen Cislo more since the time that Jenny moved out. It has been about three years since any of Cynthia's children lived with her. Cynthia testified that she and Cislo do not stay overnight at each other's houses out of respect for their children—should the children unexpectedly show up. Since her divorce she has not had sex with anyone other than Cislo. She did not have a key to Cislo's residence but she knew the security code for his garage door.

¶ 13 Cynthia further testified that she spent Christmas 2010 at her brother's house in Milwaukee. Two of her children and Cislo were also there. She traveled to Milwaukee with Cislo. On Christmas morning she was home alone and she spent Christmas Eve at home with her sons. However, she and Cislo had gone to midnight mass together. Cislo had also been at her house on Thanksgiving 2010 with her three sons. She spends every Thanksgiving with her children. Cislo was not present prior to 2010. In 2006 she spent Christmas Eve with her children. She normally spends Christmas Day afternoon at her brother's house. Cislo did not join her in 2008. She and Cislo celebrated Easter

2010 together. They happened to be in Texas at the time and went to dinner with her brother and her brother's family.

¶ 14 She and Cislo do not see each other's children very often. In 2011, she had seen Cislo's son, Ryan, on one occasion—they met for dinner at the Royal Fox Country Club. She had also seen Cislo's daughter, Jenny, at a New Year's Eve party at Cislo's house. Cynthia testified that, in 2011, none of her children had been with Cislo. In 2010, she had been with Cislo's children less than 10 times. In 2010, her children had gathered with Cislo present on about two occasions. Cislo did not go to Jason's law school graduation ceremony but he had joined them for dinner afterwards. Cislo met her mother on two occasions. She had met Cislo's father and stepmother, who lived in California, in 2006. They came to visit Cislo and she and Cislo went out to dinner with them one evening. She also met them when she and Cislo were in San Francisco in 2007.

¶ 15 Cynthia testified that, in September 2006, she started a new job at Central DuPage Hospital as a laboratory supervisor. She was earning about \$60,000 per year. She obtained a bachelor of science degree in medical technology in 1980. In September 2009, she was promoted to laboratory manager. Her current annual salary was \$73,000. She worked about 50 hours per week. She participated in a 401(k) plan and also received medical insurance through her employer.

¶ 16 Cynthia acknowledged her July 27, 2010, financial statement marked as Exhibit No. 4. Her statement indicated a monthly income of \$5,651. She had a raise since then. Her statement indicated that she paid monthly rent of \$994. She also paid \$220 per month in association fees. She had stated that she incurred \$352 per month in furniture and appliance repair. She acknowledged that was for the first year she moved in and many of those expenses would not recur on an annual basis. She listed monthly medical bills of \$521. That was based on the medical bills she was incurring at the

time she filled out the statement. She was not currently incurring such high medical bills. She acknowledged that, overall, the statement showed that she was \$1,000 per month behind. She made up the difference with a credit card. She had credit card debt of \$9,315. Of that amount, \$8,000 was for attorney fees. She also owed another \$3,900 in attorney fees. She paid \$150 per month under an arrangement made with one of her attorneys. She currently drove a Nissan Altima. Cislo had paid for the car and there was no lien. She contributed \$1,123 monthly to a 401(k) plan. Her employer matched a certain percentage of what she contributed to the 401(k). She paid \$60 every other week for a maid service.

¶ 17 On cross-examination, Cynthia acknowledged that her financial statement did not list her monthly maintenance from Michael, which would have decreased her monthly deficit. She suffered from Wilson's disease, an enzyme deficiency that caused toxic amounts of copper to accumulate in the body. She received regular medical treatment for that disease, including regular blood and urine tests and she was on medication. At the time she filled out the financial statement her medication cost \$180 per month. However, at the time of her testimony, it only cost \$70 for a three month supply. She spends about \$56 per month on migraine medication.

¶ 18 She and Cislo did not live together and they did not keep personal items at each other's houses. They did not do chores at each other's houses. They ate at each other's houses about two or three times per year. Cislo was not the beneficiary of any of her employment benefits, retirement accounts, or of her life insurance policy. Her children were the beneficiaries. Other than her car, Cislo did not give her money or pay her bills. They generally did not buy each other's children gifts. At the few times that gifts had been given, they generally had been small items.

¶ 19 Cislo testified that he lived in St. Charles. He was divorced. He had four children. Cislo met Cynthia in 2002 or 2003, at a health club. At some point, Cynthia became his personal trainer. He believed that Cynthia was in the process of getting divorced at that time. He believed that they actually started dating in 2006. However, they had gone out and had sexual relations prior to that. He acknowledged that they took a trip to the Bahamas in 2005 but he did not consider them to be “dating” at that time. In 2005, he was in the process of getting divorced. His divorce was final in March 2006. None of his children currently resided with him. The youngest, Valerie, who was 17 years old, lived with her mother. However, she was at Cislo’s house every day. There was a restriction in his divorce decree that he was not allowed to have overnight guests while his children were with him for visitation. He did not like to “mix girlfriends and kids.” Cynthia had never slept overnight at his home and he had never stayed the night at her home. They did not keep personal items at each other’s houses.

¶ 20 Cislo further testified that he had owned a manufacturing business which he had sold in 2006, when he retired. He made a substantial profit from the sale such that he was able to retire at age 48. He currently managed his investments. Other than his own residence, the only other real estate he currently owned was the townhouse that he was renting to Cynthia. He had owned other rental property in the past. He paid \$220,000 for the townhouse he was renting to Cynthia. The rent was basically three percent on the asset plus all expenses. When Cynthia paid the rent, he deposited the money in the bank. He did not give her the money back. He acknowledged that he paid about \$22,000 for Cynthia’s car. Other than paying for Cynthia’s car, he did not give her any money or pay any of her bills. The car was a gift. He sent her flowers for Valentine’s Day. He had given her a DVD player this past Christmas. Since 2006 he normally gave her Christmas and birthday

presents. He had given Cynthia gifts of jewelry over the years. One gift was a “Tag” watch that cost about \$3,200.

¶ 21 He had recently taken a trip to Florida with Cynthia. Since 2005, he and Cynthia had traveled to Michigan, Indiana, Florida, Texas, Wyoming, New York, Hawaii, Washington D.C., Mexico and California. He paid for most of the trips. In the summer of 2010, he went up to Lake Geneva about fifty times. Cynthia went with him about five times. In July 2009, he rented a house on Lake Coeur d’Alene, Idaho, for his children. Cynthia did not join them. In 2010, he spent the major holidays with his children. His children usually spent part of the holidays with him and part with their mother. Cynthia did not celebrate holidays with his children.

¶ 22 In 2010, he saw Cynthia three or four times per week. They would get together if it was convenient and if Cynthia did not have to work late. Cynthia was the only person he dated since his divorce. He had not been to many significant events for Cynthia’s children. He did join them for lunch after Jason’s law school graduation. He went with Cynthia to her brother’s house in Wisconsin on Christmas Day 2010. On Thanksgiving Day 2010, Cynthia made dinner for her sons and he showed up for an hour or two. He met Cynthia’s mother twice. He did not see Cynthia very much between March 2009 and Spring 2010 because one of his daughters was battling cancer and he spent most of his time taking his daughter to treatments and doctor appointments. Cynthia did not go with him to any of the treatments and she did not visit him at his home during that time. Before that, he had children living with him so he did not see Cynthia as often as he did now.

¶ 23 Cislo further testified that Cynthia was not the only one for whom he had purchased a car. Between 2000 and 2006, he had given away 10 cars to friends and coworkers. He also gave a car to one of his daughters. He had also purchased jewelry and watches for people other than Cynthia.

He had purchased watches, comparable in value to the watches he had given Cynthia, for his friends, coworkers, sisters, mother, and niece. He had given a Rolex to his attorney. He had a lot of friends who lived out of state. Cynthia did not usually go with him when he visited his friends. Since knowing Cynthia, he had gone to Minnesota many times to visit relatives. However, Cynthia only went with him once. He did not have any joint accounts with Cynthia and she was not the beneficiary of any of his retirement accounts or life insurance policies.

¶ 24 Michael testified that he lived in an apartment in Carol Stream. Two of his sons lived with him. His youngest son, Joshua, suffered from a combination of depression, paranoia, hallucinations, and anxiety. Michael had worked for the Nuclear Regulatory Commission for 26 years. He currently supervised engineers working at power plants in Wisconsin. After his divorce, he paid Cynthia \$900 per month in maintenance. After the four-year review, it was reduced to \$500 per month. Michael identified Respondent's Exhibit No. 5 as his financial statement that he completed in August 2008 in response to Cynthia's petition to continue maintenance. At that time his salary was probably \$140,000 per year. Michael identified Respondent's Exhibit No. 6, his financial statement completed in August 2010. He had a life insurance policy and his children were the beneficiaries. He paid \$780 a month to a credit union to cover two car loans. He contributed monthly to a retirement plan. His children were not contributing to the rent or household expenses. He was paying student loans for Jason and Jacob. He identified Jason's "Sallie Mae" loan as one of the loans he was required to pay under the dissolution judgment. He had total monthly expenses of about \$3,300. Cynthia was not helping to pay their children's student loans.

¶ 25 On cross-examination, Michael acknowledged that he was not required to pay his son's health club expenses, telephone expenses, or pay for their cars, gas, or clothes. The divorce decree

did not require him to pay for his son Jason's law school loans. Michael could not identify which of Jason's student loans, listed in Michael's 2010 financial statement, were for college and which were for law school. Michael also acknowledged that, pursuant to the parties' dissolution judgment, his obligation to pay for his children's dental and medical expenses terminated if the children graduated from college or ceased to pursue a full-time course of study. Michael testified that his two oldest sons had graduated college and his youngest son was not attending school full-time. Finally, Michael acknowledged that his monthly expenses for his family were \$2,400 in 2008 and \$3,099 in 2010. In 2010, he received a \$25,000 inheritance.

¶ 26 Jason testified that he lived with his father but did not pay rent. He had graduated from law school but was not yet employed full time. His younger brother, Joshua, also lived with him and his father. Jason testified that his mother did not contribute to his support. His mother's townhouse had three floors, backed up to a lake, had two bedrooms, a fireplace, a kitchen, and a two-car garage. His mother's previous residence was smaller. He met Cislo for the first time in 2004 or 2005. He had seen Cislo at his mother's house on either Thanksgiving Day or the day after. Cislo went out to dinner with him and his mother a couple times in 2010. In June 2009, he went out to dinner with his girlfriend, his mother, Cislo, and Joshua. His mom paid for the meal. In 2008 and 2009 he would randomly see Cislo at his mom's house. On cross-examination, Jason testified that he had about \$90,000 in college loans and \$60,000 in law school loans. His father voluntarily made the monthly payments on those loans.

¶ 27 The parties submitted several exhibits into evidence, including a copy of the lease agreement between Cynthia and Cislo, and the parties' various financial statements. The exhibits included Cynthia's and Michael's financial statements from 2008 and 2010.

¶ 28 On May 25, 2011, the trial court issued a written letter opinion. The trial court found that Cynthia did not cohabit with Cislo on a resident, continuing conjugal basis. The trial court addressed the six factors generally considered by courts in making a determination on that issue. The trial court noted that Cynthia and Cislo's relationship was long enough to qualify as a continuing conjugal relationship and they did vacation together. Nonetheless, the trial court found that they (1) did not spend enough time together to merit a finding of a "*de facto*" marriage; (2) engaged in dating activities rather than domestic activities typical of a married couple; (3) had not commingled their funds or "entangled their financial affairs;" and (4) did not spend significant holidays together as a family unit. The trial court acknowledged that Cislo had purchased a townhome for Cynthia but found that the evidence showed that she paid rent consistent with an arms length transaction and that this did not appear to be a "sham."

¶ 29 The trial court further found that there was not a substantial change in circumstances warranting a termination of maintenance. The trial court again analyzed the statutory factors to be considered in making such a determination. The trial noted that (1) Michael's earnings were twice those of Cynthia and he had twice as much in retirement savings; (2) Cynthia's monthly needs were about the same and Michael's needs were substantially less than his net income, disregarding the expenses of the adult children that Michael voluntarily paid; (3) Cynthia had no room for advancement in her current position and Michael would out-earn her by \$750,000 over the next 10 years; (4) the judgment for dissolution indicated that the maintenance was more permanent in nature than rehabilitative; (5) the parties were married for 24 years; (6) the only circumstances that changed since the parties' agreement in 2009 was that Michael's and Cynthia's incomes increased by \$18,000 and \$13,000, respectively; and (7) Michael had paid 7 years of maintenance following a 24 year

marriage. After considering the statutory factors, and the standard of living during the marriage, the trial court found that termination of maintenance was not warranted. On June 9, 2011, a written order was entered incorporating the trial court's letter opinion. On July 6, 2011, Michael filed a notice of appeal from the trial court's June 9 order, docketed by this court as case No. 2-11-0660.

¶ 30 On January 24, 2011, on the same day the trial commenced, Cynthia filed a petition for contribution to attorney fees and costs pursuant to section 508(a) of the Act (750 ILCS 5/508(a) (West 2010)). In her petition, Cynthia alleged that she had incurred \$12,599.95 in attorney fees and costs relative to the petition to terminate maintenance. That amount did not include the fees and costs to be incurred for the hearing on the petition. Cynthia requested contribution based on the disparity in the parties' incomes. On June 2, 2011, Cynthia filed an amended petition alleging that she had incurred attorney fees and costs in the amount of \$21,208.03.

¶ 31 On July 25, 2011, a hearing was held on Cynthia's petition for contribution. Cynthia testified that since March 2011, due to a reorganization by her employer, her annual income had decreased to \$64,000. She had paid her attorney fees to that point by credit card and some cash. She was still contributing to her retirement plan. Michael testified that his salary had not increased since March 2011. He had received a \$24,000 inheritance in 2010. On August 17, 2011, the trial court issued a written letter opinion granting Cynthia's petition and awarding her \$10,000 in attorney fees. The trial court found that, although Cynthia earned a significant income, she should not be deprived of her maintenance award by incurring attorney fees in defense of that award. An order was entered incorporating the trial court's letter opinion on August 25, 2011. On September 15, 2011, Michael filed a motion to reconsider. On November 7, 2011, the trial court denied the motion to reconsider.

On December 1, 2011, Michael filed a notice of appeal from the June 9, August 25, and November 7 orders of the trial court, docketed by this court as case No. 2-11-1225.

¶ 32 On November 3, 2011, Cynthia filed a petition for interim attorney fees and costs. Cynthia argued that, based on the parties' disparity in income, she was entitled to interim fees related to defending against Michael's appeals of the post-decree orders. On December 7, 2011, following a hearing, the trial court granted Cynthia's petition for interim fees in the amount of \$5,500. The trial court granted Michael's oral request for a payment schedule for the previous fee award of \$10,000 and for the interim fee award. The trial court ordered Michael to pay \$2,500 to Cynthia within seven days and \$1,500 per month on the first of the month thereafter until paid in full. On December 15, 2011, Michael filed a notice of appeal from the December 7 order. This court docketed the case as No. 2-11-1269. On January 10, 2012, on the motion of the parties, this court consolidated the appeals in case Nos. 2-11-0660, 2-11-1225, and 2-11-1269.

¶ 33

II. ANALYSIS

¶ 34 Michael's first contention on appeal is that the trial court erred in finding that Cynthia was not cohabiting on a resident, continuing, conjugal basis and, therefore, denying his petition to terminate maintenance. A party's obligation to pay maintenance may be terminated if the party receiving maintenance is engaged in a resident, continuing conjugal relationship with a third party. 750 ILCS 5/510(c) (West 2008). Illinois courts generally look at the following factors to determine the existence of such a relationship: (1) the length of the relationship; (2) the amount of time the couple spends together; (3) the nature of the activities engaged in; (4) the interrelation of their personal affairs; (5) whether they vacation together; and (6) whether they spend holidays together. *In re Marriage of Sunday*, 354 Ill. App. 3d 184, 189 (2004). The burden is on the party seeking the

termination of maintenance to prove that the party receiving maintenance is involved in a *de facto* husband and wife relationship with a third party. *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929 (2006). This court will not disturb a trial court's determination concerning the existence of a *de facto* husband and wife relationship unless that determination is against the manifest weight of the evidence. *Sunday*, 354 Ill. App. 3d at 189.

¶ 35 In the present case, the first and fifth factors favor a finding of a resident, continuing conjugal relationship. Cynthia met Cislo in 2001 and acted as his personal trainer in 2002. They stayed friends and began traveling together in 2005. In 2006, they were "dating." By the time Michael filed his petition to terminate maintenance, Cynthia and Cislo had been dating for at least four years. The evidence showed that Cynthia and Cislo vacationed extensively together. They had consistently been on at least three vacations per year since 2005.

¶ 36 The second and third factors favor a finding that there was not a resident, continuing conjugal relationship. The evidence showed that Cynthia and Cislo spent a few nights a week together either going out to eat, spending time with friends, or seeing a movie. However, they never slept over at each other's homes and rarely prepared home-cooked meals for each other. They did not perform household chores at each other's homes. Furthermore, there was a period of time when Cislo's daughter was undergoing cancer treatments where Cynthia did not see Cislo for about a year. Cynthia and Cislo did not see each other if Cynthia had to work late or if either one of them was with their children. Accordingly, Cynthia and Cislo did not see each other with the frequency expected, nor engage in the activities expected, in a *de facto* marriage.

¶ 37 The fourth factor also favors a finding that Cynthia and Cislo were not engaged in a conjugal relationship. The evidence was uncontradicted that they did not intermingle any funds nor did either

contribute to the other's household funds. They maintained separate households and separate finances. They did not keep personal items at each other's homes. They both testified that the other was not a beneficiary under any employment benefits, insurance policies, or wills. The evidence showed that Cislo was Cynthia's landlord. However, Cislo testified that he cashed Cynthia's rent checks and did not return the money to her. The trial court found this testimony credible as it determined that Cynthia's townhouse rental was an arms length transaction that did not appear to be a "sham." Further, although Cislo purchased a car for Cynthia, he testified that this was a gift and that he had purchased cars for about 10 other people over a six year period.

¶ 38 The final factor, whether Cynthia and Cislo spend holidays together, also favors a finding that there was not a conjugal relationship. The evidence showed that although Cynthia and Cislo would occasionally see each other on a holiday, they were primarily concerned with spending holidays with their own children. Cynthia never spent any holidays with Cislo's children. Michael notes that Cislo was at Cynthia's house on Thanksgiving 2010, along with her three sons. However, Cislo testified that he was only at her house for one or two hours. Cynthia testified that Cislo had never joined her and her children on Thanksgiving Day prior to 2010. Accordingly, since four of the six factors favored a finding that there was not a conjugal relationship, we cannot say that the trial court's determination was against the manifest weight of the evidence.

¶ 39 Michael's next contention on appeal is that the trial court erred in finding that there was not a substantial change in circumstances warranting a termination of maintenance. Michael's argument is twofold. First, he argues that he was not required to prove a substantial change in circumstances because the maintenance award was "reviewable." Second, he argues that the statutory factors favor a termination of maintenance.

¶ 40 Michael is correct that when parties have agreed to a review of maintenance, the paying party does “not have the burden of proving a substantial change in circumstances.” *Blum v. Koster*, 235 Ill. 2d 21, 35 (2009). However, the parties January 27, 2009, agreed order stated that Michael would pay Cynthia \$500 per month in reviewable maintenance commencing June 3, 2008. Accordingly, maintenance was reviewable in June 2012. Michael filed his petition for termination of maintenance, which, notably, alleged a substantial change in circumstances, on June 30, 2010. Maintenance was not reviewable at this time and, therefore, the trial court did not err in requiring Michael to prove a substantial change in circumstances. See 750 ILCS 5/510(a)(1) (West 2008).

¶ 41 The trial court did not err in finding that there was not a substantial change in circumstances. “Courts in Illinois have held that ‘substantial change in circumstances’ as required under section 510 of the Act means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed.” *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198 (2011). A trial court is to consider only the facts that occurred since the last modification hearing and consider a substantial change in circumstances since that date. *Id.* at 199. A trial court’s decision related to modification or termination of maintenance will not be disturbed absent a clear abuse of discretion. *Id.* A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 42 We cannot say that the trial court abused its discretion in finding that Michael had not shown a substantial change in circumstances. Maintenance had been last reviewed and modified on January 27, 2009. Michael’s claim of a substantial change in circumstances was primarily based on the fact that Cynthia’s salary had increased by \$13,000 since 2008. However, the trial court noted that Michael’s salary had also increased, by \$18,000, during that same time frame. Furthermore,

Cynthia's financial statements indicated that her monthly needs had not substantially changed and that she had accumulated \$8,000 in debt between 2008 and 2010. Furthermore, Michael's 2010 financial statement indicated that his ability to pay maintenance had also not substantially changed. Although Michael's monthly living expenses had increased, the trial court noted that this was because Michael voluntarily chose to pay living, medical, and other expenses for his adult children that he was not required to pay. The January 27, 2009, agreed order provided that Michael would be solely responsible for paying the children's college expenses. However, at the hearing on his petition to terminate maintenance, Michael could not identify which of Jason's school loans were for law school and which were for college. Michael was also no longer required to pay his children's medical and dental expenses. Michael argues that the trial court failed to consider that most of Cynthia's vacation expenses were paid for by Cislo. However, this is not a change in circumstances. Cynthia had not included vacation expenses in her 2008 financial statement on which the award of maintenance was based.

¶ 43 Michael's final contention on appeal is that the trial court erred in granting Cynthia's petition for contribution to attorney fees (for her trial court expenses) and her petition for contribution to interim attorney fees (for fees related to this appeal). The trial court had awarded her \$10,000 in attorney fees and \$5,500 in interim attorney fees. Section 508(a) of the Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. 750 ILCS 5/508(a) (West 2008). Specifically, section 508(a) of the Act provides, in relevant part:

“The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees.” 750 ILCS 5/508(a) (West 2008).

Additionally, section 508(a)(3) of the Act expressly authorizes a trial court to make a prospective award of attorney fees to a party for the defense of an appeal. 750 ILCS 5/508(a)(3) (West 2008); *In re Marriage of Talty*, 166 Ill. 2d 232, 240 (1995).

¶ 44 The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. "Financial inability exists when payment would strip a party of his or her means of support and would undermine his or her economic stability, but it does not require the party to show destitution." *In re Marriage of Carpel*, 292 Ill. App. 3d 806, 832 (1992). A trial court's determination on whether to award fees will not be reversed absent an abuse of discretion. *Streur*, 2011 IL App (1st) 082326, ¶ 36. An abuse of discretion occurs where no reasonable person would take the view of the trial court. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 45 Michael argues that Cynthia failed to show an inability to pay her own attorney fees. We disagree. The evidence showed that Cynthia had incurred fees in excess of \$20,000 in defending against Michael's petition to terminate maintenance. Cynthia had used a credit card to pay many of her attorney fees. The evidence also showed that at the time of the hearing on the petition for fees, Cynthia's annual salary had decreased from \$73,000 to \$64,000. We acknowledge that her 2010 financial statement indicated that she was making a voluntary monthly contribution of \$1,123 to a retirement account. However, the evidence also showed that Michael had significantly more retirement assets than Cynthia and a much higher long-term earning potential. Specifically, Michael's financial statement indicated that he had retirement assets of \$120,000, while Cynthia's financial statement indicated that she had retirement assets of only \$51,000. As noted by the trial court, "the spouse seeking the award of attorney fees need not be destitute. [Citation]. It is sufficient

that payment would exhaust the spouse's estate or strip the spouse's means of support or undermine the spouse's economic stability." *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 598 (2001). Requiring Cynthia to forgo saving for retirement in order to pay all her attorney fees would undermine her economic stability.

¶ 46 Moreover, the evidence showed that Michael had the ability to pay Cynthia's attorney fees. Michael earned over \$140,000 per year, more than double Cynthia's annual salary. As noted above, he also had a much higher long-term earning potential. Michael also received an inheritance of approximately \$24,000 in 2010. Although Michael's 2010 financial statement showed that he had a monthly shortfall of \$640, it also indicated that he was incurring \$3,100 in monthly expenses for his adult sons. Although Michael was required to pay his children's college expenses, he was also paying many expenses for his adult sons that he was not required to pay. Accordingly, based on the economic disparity in the parties' incomes and long-term earning potential, we cannot say that the trial court abused its discretion in granting Cynthia's petitions and ordering Michael to contribute to a portion of her attorney fees.

¶ 47

III. CONCLUSION

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

¶ 49 Affirmed.