

NOTICE

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2012 IL App (5th) 110438-U  
NO. 5-11-0438  
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
GARY D. CARR,	)	Lawrence County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 06-D-71
	)	
KATHY M. CARR,	)	Honorable
	)	Christopher L. Weber,
Respondent-Appellant.	)	Judge, presiding.

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JUSTICE WEXSTTEN delivered the judgment of the court.  
Justice Chapman concurred in the judgment.  
Justice Welch concurred in part and dissented in part.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in modifying the petitioner's maintenance obligations but should not have set a date certain upon which the obligations would terminate.

¶ 2 The petitioner, Gary D. Carr, filed a petition to terminate the maintenance that he had been ordered to pay the respondent, Kathy M. Carr, pursuant to a previously entered judgment of dissolution of marriage. In response, the respondent filed a counterpetition to continue the maintenance. Following a hearing, the trial court entered an order modifying the petitioner's maintenance obligations and setting a date certain on which they would terminate. The respondent appeals, and for the reasons that follow, we affirm as modified.

¶ 3 **FACTS**

¶ 4 The parties married in May 1975. Thirty years later, irreconcilable differences

resulted in an irretrievable breakdown of the marriage relationship, and the parties separated and lived apart for over two years during the pendency of their divorce.

¶ 5 In August 2007, the trial court entered a judgment of dissolution of marriage awarding the respondent approximately half of the couple's marital property, including the marital home, minus half the equity, and a 2001 Mercedes automobile valued at \$10,000. The trial court determined that the total value of the marital property awarded to the respondent was \$750,188.50 and that the total value of the marital property awarded to the petitioner was \$760,024.50. To "equalize these amounts" the court ordered the petitioner to pay the respondent \$4,918. The parties' personal property was divided "pursuant to their stipulation."

¶ 6 With regard to maintenance, the trial court noted that the parties were in dispute regarding the amount and duration. The petitioner's position was that the respondent should receive \$4,000 per month, "reviewable in three years," while the respondent sought permanent maintenance in the amount of \$8,200 per month. Noting that the petitioner had already been "voluntarily paying" the respondent nearly \$4,400 per month to cover her expenses, the trial court set maintenance in the amount of \$6,550 per month, reviewable upon the petitioner attaining the age of 65 years. Referencing the petitioner's W-2 wages for the years 2005 and 2006, which reflected respective earnings of \$276,820 and \$251,300, and the petitioner's testimony that he "works 80-100 hours per week" and "hopes to work to age 65," the trial court discussed and cited authority for the proposition that a court can consider "retirement in determining duration of maintenance." Specifically, the court stated the following:

"The [c]ourt does not believe that maintenance should necessarily terminate when [the petitioner] attains the age of 65, as there was not strong evidence as to when [the] [p]etitioner will retire completely. However, the [c]ourt does find a strong correlation between the hours [the] [p]etitioner works and his earnings and finds that

as he ages [the] [p]etitioner will not be able to continue to work 80-100 hours per week. As his hours decrease, [the] [p]etitioner's income will also decrease. As to [the] [r]espondent's ability to earn income in the future, although the [c]ourt finds that [the] [r]espondent's health does not prevent her from working, [r]espondent's age, lack of education, and minimal prior work experience limit the amount she is able to earn. Therefore, in arriving at the amount of maintenance set forth above, the [c]ourt finds the future earning capacity of [the] [p]etitioner to be significantly in excess of the future earning capacity of [the] [r]espondent. The [c]ourt finally notes that [the] [r]espondent has been awarded herein approximately [\$400,000] in retirement assets which she will be able to begin withdrawing without penalty at age 59-1/2, as well as [approximately \$200,000] in liquid assets which are capable of producing investment income."

The court also ordered the petitioner to maintain a \$500,000 term life insurance policy on his life, with the respondent as beneficiary. The court stated that this obligation would also be reviewable when the petitioner turned 65. When the trial court entered its judgment of dissolution of marriage, the petitioner was a 61-year-old physician, the respondent was a 57-year-old homemaker, and both had resided in Lawrence County since 1980.

¶ 7 In September 2010, the petitioner filed a petition to terminate maintenance and for other relief. Noting that his sixty-fifth birthday was drawing near, the petitioner sought review of the trial court's previously ordered maintenance obligations pursuant to the terms of the court's judgment of dissolution. The petition to terminate alleged, *inter alia*, that in order to meet his current financial obligations, including the court-ordered maintenance, the petitioner was still working 80 to 100 hours per week and that the accompanying stress had become detrimental to his health and well-being. The petition further alleged that the respondent had already received over \$235,000 in maintenance and had been working since

shortly after the entry of the judgment of dissolution of marriage. The petitioner asked that upon his sixty-fifth birthday, the court terminate his obligation to pay the respondent maintenance, as well as his obligation to maintain a \$500,000 life insurance policy naming the respondent as beneficiary.

¶ 8 In October 2010, the respondent filed a counterpetition to continue maintenance and for other relief. The counterpetition alleged that because the respondent had incurred permanent and irreversible harm to her long-term earning capacity by staying home to raise the parties' daughter, the respondent made less than \$30,000 per year and required permanent maintenance to "maintain the same standard of living she had when married to a husband earning over \$250,000 per year." Regarding the petitioner's age, the respondent alleged, *inter alia*, that he was "still able to pay support," that "retirement [was] no excuse for failing to consider his earning capacity in determining maintenance," and that "[i]f the court had intended that support automatically terminate at age 65, it would have said so in its original order." The respondent's prayer for relief was that "the court make no change to [the petitioner's] obligations to pay maintenance and maintain life insurance."

¶ 9 In September 2011, the cause proceeded to a hearing, and the following evidence was adduced. The respondent testified that she still resided at the marital residence and that since 2007, she had made several improvements to the home at a cost of \$33,600. She also spent somewhere between \$6,000 and \$10,000 to have numerous trees removed from the home's property. The respondent indicated that although the home's estimated value was over \$250,000 in 2007, she believed that it was presently worth \$217,000. The respondent acknowledged that her daughter and son-in-law have lived with her since 2007 and that although both were employed, they made no contributions towards her monthly utility bills or the mortgage that she had taken out on the marital home. She further acknowledged that although she claimed an \$800 per month need for a "housekeeper and yard work," her

daughter and son-in-law took care of the yard.

¶ 10 The respondent testified that she was 61 and that since August 2007 she had been employed as a "Financial Aid Associate" for Vincennes University. The respondent indicated that she was essentially "a secretary" earning less than \$30,000 per year, plus benefits, and that a friend had helped her acquire the job. The respondent stated that when she was younger, she had attended college for about "two and a half years," but she did not presently have the time or energy to take "college course work that would improve the likelihood of [her] getting a better paying position." The respondent testified that she spent \$7,200 per year on flowers and gifts for family and friends and \$400 per month on clothing. The respondent acknowledged that she had over \$385,000 in the primary retirement account that she had previously been awarded, and her financial affidavit indicated that she had over \$120,000 in additional investments and over \$50,000 in her checking and savings accounts. The respondent sold a property that she had been awarded for \$5,000.

¶ 11 Describing her overall health as "not the greatest," the respondent testified that she suffered from allergies and asthma and that her asthma gets worse every year. The respondent stated that she had not taken a vacation since her divorce and that when she was married to the petitioner, they took "a long vacation and then shorter ones other times of the year." The parties' vacation destinations included Hawaii, Scandinavia, Ireland, England, Canada, Disney World, the Rocky Mountains, and the Caribbean. In addition to not taking any vacations, the respondent stated that changes in her lifestyle since her divorce included driving a Toyota rather than a Mercedes and having her daughter and son-in-law mow her yard. In her financial affidavit, the respondent reported that her net monthly income was \$6,723 and that her average monthly expenses totaled \$6,734.

¶ 12 The petitioner testified that he was 65 and was still a practicing physician in the Lawrence County area. The petitioner testified that while he and the respondent were

married, she was a stay-at-home mother and had helped him through medical school. The petitioner married his current wife in January 2008. The petitioner testified that his present medical practice consisted of contractual work for the Rural Health Clinic, the Lawrence County Health Department, the Lawrence County Memorial Hospital's emergency room (the ER), and a "couple of nursing homes." He also does "inpatient work at the hospital." The petitioner indicated that his practice in 2007 was the "[s]ame as it is now," with the exception of his working additional 24-hour shifts at the ER each month. The petitioner further indicated that in addition to working eight 24-hour shifts per month in the ER, he saw patients three days a week at his office and one day a week at the nursing homes. The petitioner testified that although he had wanted to reduce his ER days as he got older, he was now working more ER days "to pay [his] bills." He further testified that he volunteered to work holidays at the hospital for extra pay. The petitioner testified that his gross income "flow[ed] into" a professional corporation that he owned and operated.

¶ 13 The petitioner testified that he and his current wife had begun construction on a new home shortly after they were married and that the "original construction loan" was for \$300,000. Due to significant overruns in the project's costs, however, the mortgage on the home was now approximately \$460,000. The petitioner indicated that he had used local contractors on the building project and that although the contractors were people he knew, "[e]verybody said one thing and sent [him] a bill for another." The petitioner indicated that in addition to the funds he had borrowed, he had used money from his savings and investment accounts to complete the home's construction. The petitioner testified that although it had been appraised at \$600,000, he had "more than that invested in the home."

¶ 14 Describing his typical work schedule, the petitioner indicated that he still worked 80 to 100 hours per week. He further indicated that given his age and the "stresses and pressures" of his job, it had become increasingly difficult for him to continue to work as

much as he does. Explaining that his current monthly expenses exceeded his monthly income by several thousand dollars, the petitioner stated that in light of his current indebtedness, he did not feel that he could work fewer hours "at this point." He further stated that he had reduced his voluntary retirement contributions from \$20,000 to \$25,000 per year to \$1,000 per year, which resulted in an increase in his actual income. The petitioner stated that he and his wife try to take "short trips" when they have time off and generally take one long vacation per year. The petitioner testified that their most recent trip was to Greece and then England, where his wife's daughter was attending school.

¶ 15 The petitioner testified that the respondent was a \$500,000 beneficiary of a 15-year term life insurance policy on his life and that the policy expired in 12 years. With respect to the maintenance that he had been paying the respondent, the petitioner indicated that he had always hoped for "some or complete relief in the future." The petitioner testified that his wife worked as a nurse practitioner and helped with the household expenses. The petitioner indicated that in 2010, his W-2 wages were approximately \$340,000, his wife's were approximately \$61,000, and their adjusted gross income was approximately \$351,000. The petitioner acknowledged that he had over \$283,000 in the primary retirement account that he had previously been awarded. The petitioner testified that he leased an automobile and that he and his wife's house was smaller than the marital home that the respondent had been awarded. The petitioner stated that over the "next several years," he hoped to pay down the mortgage on the new house, fund his retirement, and discontinue his ER shifts. The petitioner acknowledged that he received a tax benefit for paying the respondent maintenance. In his financial affidavit, the petitioner reported that his net monthly income was \$11,513.50 and that his average monthly expenses totaled \$15,751.

¶ 16 Via video evidentiary deposition, Dr. William Thompson, II, testified that he had been practicing medicine in southern Indiana since the early 1980s and that the petitioner's new

wife had worked as his nurse practitioner for the last six years. Thompson testified that he and the petitioner were not friends or close acquaintances and that he had first met the petitioner in March 2009, when the petitioner came to him seeking treatment for lumbar pain. Thompson stated that he had conservatively treated the petitioner's lumbar condition by manipulating the petitioner's back muscles and administering a trigger point injection into the affected area of his back. Additionally, Thompson later examined the results of an MRI that the petitioner subsequently obtained. Thompson testified that the petitioner suffered from a central disc bulge that would likely cause the petitioner pain in the future and could potentially limit physical activities such as climbing stairs and lifting. Thompson noted that the petitioner also suffered from hypertension. Thompson indicated that at some point, the petitioner saw a pain management specialist for his back and was assessed as having lumbar disc degeneration.

¶ 17 Thompson testified that he next saw the petitioner in December 2010. The petitioner had been "using an inversion table at home" to get "some relief from his back," but his "blood pressure was up at that point in time," and he complained of stress and fatigue. Referencing the petitioner's work schedule, Thompson indicated that he had advised the petitioner to "consider slowing down his workload," because "the stress of his workload was starting to have an overall effect upon his health."

¶ 18 Thompson saw the petitioner again in July 2011, at which point the petitioner had been treating his back with anti-inflammatory medicine. Noting that the petitioner was "65 and soon to be 66," Thompson testified that the petitioner's need to "slow down" was again discussed.

¶ 19 Thompson testified that reducing one's work hours was "difficult \*\*\* for a physician in a small rural area," because a small-town doctor is essentially on call all the time. Thompson also discussed the pressures of working in an ER and noted that his father "fell

over dead in an emergency room taking care of a patient." Reiterating that he had "no social interest with [the petitioner]," Thompson opined that the petitioner needed to reduce the number of hours that he worked and "start taking better care of [his] health."

¶ 20 During closing arguments, the petitioner noted that since the parties' divorce, he had undertaken "a construction project that got out of hand" and had "wisely or unwisely" accumulated significant debt as a result. Referencing his age, his "changing health," and the evidence that the stress and pressure of his job were "wearing on him," the petitioner argued that he could "literally become unable to pay anything \*\*\* in very short order." Emphasizing that the respondent was employed and had already received over \$310,000 in maintenance payments, the petitioner asserted that at some point, she would have to "rely upon her own resources" and perhaps modify the arrangement she had with "those persons who could [but] who are not now assisting with the housing expenses that she's incurring." The petitioner argued that his maintenance obligation should be terminated or at least reduced with an established date upon which it would terminate.

¶ 21 In response, arguing that the petitioner was "financially and physically able to make more money than he has ever made in his life," the respondent asserted that despite the evidence regarding the petitioner's age and health, he "works constantly" and "hasn't slowed down." Characterizing her job at Vincennes University as only affording her "medical coverage and small dollars," the respondent maintained that she should not have to use any of the money from her retirement savings to enjoy the standard of living that was established during the parties' marriage. Noting that the petitioner earned more money in 2010 than he did in 2007 and that his new wife also worked, the respondent argued that the petitioner's maintenance obligation should be made permanent "at the same or greater level based upon the increase in his income."

¶ 22 The trial court subsequently entered judgment on the parties' respective petitions

regarding maintenance. The court ordered the petitioner to continue paying the respondent maintenance in the amount of \$6,550 per month through March 2012 and then reduced the amount to \$3,000 per month from April 2012 through November 2013; \$2,000 per month from December 2013 through November 2014; and \$1,000 per month from December 2014 through November 2015. The court similarly reduced the dollar amount of the petitioner's obligation to name the respondent a beneficiary of a \$500,000 life insurance policy on his life, directing the respondent to carry a \$150,000 policy from September 2011 through November 2012 and a \$50,000 policy from December 2012 through November 2015. The court further ordered that the petitioner's maintenance and life insurance obligations would both terminate as of December 2015. Notably, when entering judgment, the trial court stated the following:

"I noted back in my judgment in 2007 that maintenance would be reviewable when [the petitioner] turned 65, and that was because of my view that at some point in time he would have to necessarily reduce the hours that he works. But I felt like at that time it was difficult for me to make a determination as to whether \*\*\* I should order that [the] amount start[ ] decreasing or just terminate it because I felt like that would be speculative given the fact that [the petitioner] was going to work longer.

After hearing the testimony today, I don't believe it's proper to terminate maintenance. However, I believe it's appropriate to begin reducing the amount and to determine a termination date. \*\*\* I can very well understand that as some people retire when they are 60, many work into their seventies, eighties and even further in certain instances. So, you know, I have got to take that into account.

But after listening to the testimony of the parties and also listening to the testimony of Dr. Thompson, this is what I believe is appropriate. \*\*\*

\* \* \*

And I am just going to make one more comment[.] \*\*\* [The petitioner] has obviously earned substantial sums of money, and he's worked very hard to do that. And I have no doubt that [the respondent] has assisted him greatly in that endeavor up through at least the time of their separation. I recall the testimony being that she, in effect, helped put him through medical school financially. So I don't think either party's efforts can be discounted.

And I guess the thing that I would like both of you to understand is that despite the fact that he's earned very substantial sums of money, there is probably not much in the way of savings as there very well could have been. I am considering that to a certain respect just because at some point in time this man has to slow down. We can't expect that he's going to work 80 to 100 hours per week forever. I am terminating maintenance at age 70, which is a point in time when most people have retired, not everyone[,] but a lot of people have. And I am not going to require him to pay maintenance past that date."

In October 2011, the respondent filed a timely notice of appeal.

¶ 23

#### DISCUSSION

¶ 24 The respondent's arguments on appeal raise the following issues: (1) whether the trial court was required to find a substantial change in circumstances before modifying or terminating the petitioner's maintenance obligations, (2) whether the trial court abused its discretion in incrementally reducing the petitioner's maintenance obligations, and (3) whether the trial court abused its discretion in terminating the petitioner's maintenance obligations as of December 2015.

¶ 25

#### Substantial Change in Circumstances

¶ 26 The respondent first maintains that the petitioner was required to show a substantial change in circumstances in order to receive a reduction or termination of his maintenance

obligations. The respondent suggests that the trial court's judgment should be reversed because "[n]othing in the court's ruling \*\*\* gave any indication that the court recognized its obligation to find a change of circumstances in order to modify the prior maintenance order." The petitioner counters that he was not required to show a substantial change in circumstances because the trial court's 2007 judgment of dissolution of marriage specifically provided that his maintenance obligations would be reviewable upon his sixty-fifth birthday. We agree with the petitioner.

¶ 27 At the outset, we find that the respondent has waived her contention that the petitioner was required to show a substantial change in circumstances, because she raises it for the first time on appeal. *In re Marriage of Kerman*, 253 Ill. App. 3d 492, 502 (1993) ("An issue not raised or argued in the trial court is waived on appeal."). Waiver aside, however (*In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 114 (2005) ("the rule of waiver is a limitation on the parties, and not on the reviewing court")), the contention is nevertheless without merit.

¶ 28 In pertinent part, section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (the Act) provides as follows:

"An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors[.]" 750 ILCS 5/510(a-5) (West 2006) (added by Pub. Act 93-353, eff. Jan. 1, 2004).

¶ 29 "The first sentence of section 510(a-5) speaks to the ordinary situation in which a party, without utilizing a provision in a court order allowing for review, seeks modification or termination of maintenance," *i.e.*, a "modification proceeding." *In re Marriage of Golden*, 358 Ill. App. 3d 464, 468-69 (2005). The second sentence of section 510(a-5) refers to both

modification proceedings and "review proceedings," *i.e.*, "proceedings pursuant to a court order providing for review of maintenance." *Id.* "[R]eview proceedings and modification proceedings are separate and distinct mechanisms by which reconsideration of maintenance can occur" (*id.* at 469), and at a court-ordered review proceeding, a substantial change in circumstances need not be shown before the trial court has the "discretion to continue maintenance without modification, to modify or terminate maintenance, or to change the maintenance payment terms" (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)).

¶ 30 Here, because the proceedings were brought pursuant to the review provision of the trial court's previously entered judgment of dissolution, the petitioner was not required to show a substantial change in circumstances in order to obtain modification or termination of his maintenance obligations. See *Blum*, 235 Ill. 2d at 35-36; *In re Marriage of Golden*, 358 Ill. App. 3d at 469. We also note that the cases the respondent cites in support of her position that the petitioner was required to show a substantial change in circumstances involved "modification proceedings" and were decided prior to the enactment of section 510(a-5). See *In re Marriage of Golden*, 358 Ill. App. 3d at 467; *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 974 (1997); *Helfrich v. Helfrich*, 101 Ill. App. 3d 1070, 1072 (1981); *Hickey v. Hickey*, 31 Ill. App. 3d 257, 261 (1975).

¶ 31 Maintenance Modification

¶ 32 Noting, *inter alia*, the significant disparity in the parties' annual incomes, the respondent next argues that the trial court erred in reducing the petitioner's maintenance obligations. We disagree.

¶ 33 "An award of maintenance is warranted when the court finds the spouse seeking maintenance lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself." *In re Marriage of Martin*, 223 Ill. App. 3d 855, 860 (1992). "The trial court has discretion to determine the propriety, amount, and

duration of a maintenance award." *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790 (2003). "A trial court's decision to modify maintenance upon conducting a review of maintenance will not be disturbed absent a clear abuse of discretion." *Blum*, 235 Ill. 2d at 36. "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Id.* (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 34 In determining whether modification of maintenance is appropriate, the trial court must consider the factors set forth in sections 504(a) and 510(a-5) of the Act (750 ILCS 5/504(a), 510(a-5) (West 2006)). *Id.* The statutory factors enumerated in section 504(a) are as follows:

- "(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 of the parties; and

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

750 ILCS 5/504(a) (West 2006).

The statutory factors enumerated in section 510(a-5) are as follows:

"(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

(9) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5) (West 2006).

¶ 35 The trial court has wide latitude in considering which statutory factors should be relied upon in determining maintenance, and "[n]o one factor is determinative." *In re Marriage of Pearson*, 236 Ill. App. 3d 337, 350 (1992). Additionally, when the basis for an award of maintenance is established in the record, it is not mandatory that the trial court make explicit findings for each of the statutory factors." *Blum*, 235 Ill. 2d at 38.

¶ 36 Here, arguing that despite his age, the petitioner "has suffered *no impairment at all* of his ability to earn" (emphasis in original), the respondent contends that the trial court improperly reduced her maintenance solely on the basis of the petitioner's age and the court's "own personal opinions" that "turning age 65 was a sufficient basis for reducing maintenance." As the petitioner observes, however, the respondent's argument and statement of facts ignore the testimony offered by Dr. Thompson, which the trial court specifically referred to in its order. In any event, considering the applicable statutory factors in light of the evidence presented at the hearing on the parties' respective petitions, we cannot conclude that the trial court abused its discretion in incrementally reducing the petitioner's maintenance obligations.

¶ 37 The trial court recognized that the respondent had "helped put [the petitioner] through medical school financially" and that her future earning capacity was much less than the petitioner's. The court further recognized that the parties could have saved more of the "substantial sums of money" that the petitioner earned during the parties' lengthy marriage. Nevertheless, it is apparent that the court did not intend to ever award the respondent permanent maintenance. See *Blum*, 235 Ill. 2d at 40-41 ("rehabilitative maintenance, as opposed to permanent maintenance, is intended to provide the spouse with an opportunity to adjust to nonmarital life and provide herself with independent means of support"). It is

also apparent that one of the court's primary concerns was that given the petitioner's age and health, he would ultimately have to "slow down" and reduce the number of hours that he worked. The petitioner testified that in light of his current indebtedness, he was actually working more hours than he had in the past, however, and Thompson testified that given the petitioner's age and the demands of his job, the petitioner needed to reduce the number of hours that he worked and take better care of himself. Under the circumstances, we cannot say that it was improper for the trial court to place considerable weight on this uncontroverted testimony when considering the petitioner's age and health relative to his future earning capacity. See *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 19 (holding that the trial court did not abuse its discretion in setting maintenance at a lower rate in light of ex-husband's testimony that "his income would likely soon be falling due to his age and health").

¶ 38 Because a party's maintenance award must be balanced against the party's marital property award, it was also proper for the trial court to consider the evidence regarding the property that the respondent had already been awarded. *In re Marriage of Koberlein*, 281 Ill. App. 3d 880, 884 (1996). Pursuant to the trial court's judgment of dissolution of marriage, the respondent received marital property worth approximately \$755,000, which the trial court estimated was half of the parties' combined assets. Furthermore, as the trial court noted, approximately \$400,000 of the respondent's award were retirement funds that she could withdraw from without penalty, and approximately \$200,000 of the award were liquid assets that could be used to generate additional income. As for maintenance previously paid and remaining to be paid, in the four years since the trial court entered its judgment of dissolution, the respondent received maintenance in excess of \$300,000, and pursuant to the court's modification order, she would receive an additional \$130,000 over the following four years. The trial court also noted that during the pendency of the parties' divorce, the

petitioner had been "voluntarily paying" the respondent nearly \$4,400 per month to cover her expenses. Under the circumstances, it was reasonable for the trial court to conclude that equalization of incomes was not necessary. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 391-92 (2008).

¶ 39 The record does not support the respondent's claim that the trial court modified the petitioner's maintenance obligations "on the basis of age alone." The trial court properly considered the petitioner's age and health, and we cannot say that the court's decision to incrementally reduce the petitioner's maintenance obligations was arbitrary, fanciful, or unreasonable, or that no reasonable person would take the view adopted by the court. We accordingly affirm the trial court's judgment in that regard.

¶ 40 Maintenance Termination

¶ 41 The respondent lastly argues that the trial court abused its discretion in terminating the petitioner's maintenance obligations as of December 2015. We agree.

¶ 42 "Every case in which a termination of maintenance is sought presents a unique set of facts." *In re Marriage of Susan*, 367 Ill. App. 3d 926, 930 (2006). When determining whether to terminate maintenance, a trial court must consider the same statutory factors used when determining whether to modify maintenance, and the standard of review is the same. *Blum*, 235 Ill. 2d at 36. A trial court's decision to terminate maintenance will not be disturbed absent a clear abuse of discretion. *Id.*

¶ 43 The petitioner essentially maintains that the evidence supporting the trial court's decision to modify his maintenance obligations equally supports its decision to terminate the obligations as of December 2015, at which point he will be 70 years old. The respondent counters that the court's decision to terminate was based on speculation as to when the petitioner will actually retire and that, in any event, she is entitled to permanent maintenance.

"The Act allows for both temporary and permanent maintenance awards.

[Citation.] As a general rule, '[m]aintenance is intended to be rehabilitative in nature to allow a dependent spouse to become financially independent. Permanent maintenance is appropriate, however, where a spouse is unemployable or employable only at an income substantially lower than the previous standard of living.' [Citations.] 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]." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651-52 (2008).

"The policy underlying rehabilitative maintenance is to sever all financial ties between the former couple in an expeditious, but just, manner and make each spouse independent of the other as soon as practicable." *In re Marriage of Carpenter*, 286 Ill. App. 3d 969, 973 (1997).

¶ 44 As previously noted, the record indicates that the trial court did not intend to award the respondent permanent maintenance. In support of her contention that her maintenance should be made permanent, the respondent argues that she should not have to deplete her existing resources to maintain herself with the standard of living established during the parties' marriage given that the petitioner has sufficient income from which to pay support. The cases she cites in support of that proposition are distinguishable, however. In *In re Marriage of Drury*, 317 Ill. App. 3d 201, 206 (2000), the wife "did not receive significant assets" upon the parties' divorce, and she was not "able to enjoy her pension benefits or the portion of [her ex-husband's] pension that she was awarded for some time." In *Kenly v. Kenly*, 47 Ill. App. 3d 694, 696-97 (1977), the wife was left with less than half the monetary assets that her former husband had and "was not employable, for medical reasons." Moreover, here, the evidence before the trial court did not demonstrate that the respondent had been required to deplete her resources to maintain the standard of living to which she had become accustomed. Rather, the evidence established that the respondent still had the

majority of the monetary assets that she had previously been awarded and was partially supporting her daughter and son-in-law. Additionally, "the standard of living established during the marriage" (750 ILCS 5/504(a)(6) (West 2006)) was but one factor for the trial court to consider, as was the disparity in the parties' present and future earning capacities (750 ILCS 5/504(a)(3) (West 2006)). Nevertheless, "[a] maintenance award of a specified duration must be based on evidence, not speculation" (*In re Marriage of Ward*, 267 Ill. App. 3d 35, 42 (1994)), and until the petitioner actually retires, it cannot be said that he does not have sufficient income from which to pay support. We thus conclude that the trial court abused its discretion in setting a date certain upon which the petitioner's maintenance obligations would terminate. *Cf. In re Marriage of Puls*, 268 Ill. App. 3d 882, 888 (1994) (holding that where the wife received substantial assets pursuant to the judgment of dissolution of marriage, it was "not unfair or an abuse of discretion for the trial court to tie the duration of [her] maintenance to the date of her former husband's retirement"). Pursuant to our authority to modify the trial court's judgment pursuant to Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we therefore vacate the portion of the trial court's order terminating the petitioner's maintenance obligations as of December 2015. When the petitioner does retire, however, or can otherwise demonstrate a substantial change in circumstances, he may seek further modification of his maintenance obligations. See 750 ILCS 5/510(a-5) (West 2006). Accordingly, the trial court's judgment is affirmed as modified. See *In re Marriage of Keip*, 332 Ill. App. 3d 876, 885 (2002).

¶ 45

#### CONCLUSION

¶ 46 For the foregoing reasons, we affirm the trial court's judgment modifying the petitioner's maintenance obligations but vacate its judgment terminating the modified obligations as of December 2015.

¶ 47 Affirmed as modified.

¶ 48 JUSTICE WELCH, concurring in part and dissenting in part:

¶ 49 I would affirm the trial court on all issues. The trial court ordered the maintenance terminated when the petitioner reached the age of 70. Modifying or terminating maintenance is subject to an abuse of discretion standard of review. *Blum*, 235 Ill. 2d at 36. The trial court has abused its discretion if no reasonable person would take the view adopted by the trial court. *Id.* This is not the case here.

¶ 50 The majority clearly set out the conditions of the division of property at the time of the dissolution. It also set out the change of condition with respect to the respondent's newly acquired job and income plus the uncontested medical conditions of the petitioner, brought on by his working such excessive hours.

¶ 51 The trial court did not abuse its discretion. I would affirm the trial court on all issues.