

Order filed September 26, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF LAURA COZZI,	)	Appeal from the Circuit Court of Du Page County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-D-609
	)	
ANDREW G. REV,	)	Honorable
	)	Robert Douglas,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Accounts receivable were an asset of petitioner's non-marital medical practice. The trial court's classification of the parties' marital home as non-marital was not against the manifest weight of the evidence. The trial court erred in granting petitioner's motion for partial summary judgment, barring respondent from seeking maintenance where material issues of fact remain in dispute as to whether respondent had entered into a *de facto* marriage.

¶ 2 Respondent, Andrew Rev, appeals from the judgment of the circuit court of Du Page County dissolving his marriage to petitioner, Laura Cozzi. Respondent argues that: (1) the trial court erred in failing to recognize, classify, and distribute petitioner's account receivable in her

medical practice; (2) the trial court's classification of the parties' marital home at 6 Shelburne Drive, Oakbrook, Illinois ("Shelburne home") as petitioner's non-marital property was against the manifest weight of the evidence; and (3) the trial court erred in granting petitioner's motion for partial summary judgment, barring respondent from seeking maintenance. We affirm in part and reverse and remand in part.

¶ 3

### I. BACKGROUND

¶ 4 The parties were married on August 28, 1994, in Cook County, Illinois. Prior to the marriage, petitioner purchased a home located at 1300 N. LaSalle Street, Chicago, Illinois ("Chicago home"). The parties executed a prenuptial agreement which provided that any assets acquired in their separate names before the marriage or property acquired by way of proceeds or income from property owned at the commencement of the marriage, would remain the property of the spouse who acquired such property. The prenuptial agreement listed petitioner's premarital assets as the Chicago home and her medical practice. The Chicago home was purchased solely by petitioner and titled solely in her name.

¶ 5 In 2000, petitioner purchased the Shelburne home with the proceeds from the sale of the Chicago home. Respondent made no direct financial contribution to the purchase of the Shelburne home. On August 6, 2000, just prior to petitioner closing on the Shelburne home, the parties entered into an untitled agreement. Relevant here, the agreement stated that:

"Andrew Rev recognizes his obligations to the family household as a husband. Andrew agrees that he must pay no less than 50% of the household bills including but not limited to the mortgage, assessments, taxes, utilities, improvements, renovations, roof replacement, moving costs, food, pool costs, landscaping, snow removal, and furniture. If these monies are not paid, it will be deducted with simple interest should a divorce

occur. He agrees to pay 100% of real estate taxes and mortgage payments for 7 years. In the event a divorce occurs before 7 years, a credit for the full amount will be paid to Laura Cozzi at the time of the divorce. Interest will begin to accrue after 30 days of the due date of the bill.”

¶ 6 On March 26, 2014, petitioner filed for dissolution of marriage citing irreconcilable differences. Her petition prayed for both parties to be barred from maintenance and that her non-marital property be awarded to her. On April 25, 2014, respondent filed a counter-petition for dissolution of marriage in which he cited irreconcilable differences. His petition prayed for petitioner to be barred from maintenance while awarding a sum of maintenance to him as he was unemployed and on the verge of permanent retirement.

¶ 7 Following a flurry of petitions not relevant to this appeal, filed on behalf of both parties, petitioner filed a motion for partial summary judgment on April 8, 2015. The petition moved for the court to find that the Shelburne home was petitioner’s non-marital property pursuant to section 5/503(a)(2) and 5/503(a)(4) of the Illinois Marriage and Dissolution of Marriage Act (the Act). Additionally, the petition sought a finding of summary judgment as to the barring of maintenance for respondent through sections 5/504 and 5/510(c) of the Act, alleging respondent was cohabitating with another person on a resident, continuing conjugal basis. Attached to petitioner’s petition for partial summary judgment was a document entitled “Relationship Commitment.” The Relationship Commitment was signed by respondent on November 2, 2010, and illustrated an agreement between respondent and Duong Thi Hoang (“Yen”) to enter into a legal marriage within 24 months of the effective date of the commitment (October 2012). This Relationship Commitment was executed in Vietnam and lists provisions and penalties attributable to respondent and Yen that are too numerous to list here. Also attached to

petitioner's petition for partial summary judgment was an addendum to the Relationship Commitment. The addendum was executed on December 14, 2010, and states respondent's intention to communicate with Yen concerning the Commitment through a separate private email account. Additionally, the addendum states that due to respondent needing to remain in the United States until February 2011, the time for respondent and Yen to begin living together shall be extended another month. Petitioner further alleged in her petition for partial summary judgment that respondent had transferred \$3,000 to Yen after entering into the Relationship Commitment, as well as returned to Vietnam to continue his relationship with Yen.

¶ 8 Petitioner also filed a request for the admission of facts and genuineness of documents on April 8, 2015, pursuant to Supreme Court Rule 216. Relevant here, paragraph 11 of the request asked respondent to admit that the funds for the purchase of the Shelburne home came solely from the sale proceeds of the Chicago home.

¶ 9 Respondent filed his response to petitioner's motion for summary judgment on May 11, 2015. As to the Shelburne home, respondent denied that the property was titled solely in the name of petitioner and affirmatively stated that he had marital rights to the property even though not listed on the deed. He further denied that he made no direct financial contribution to the purchase of the Shelburne home or that he made no contribution to the household bills. As to the agreement executed by the parties prior to the closing on the Shelburne home, respondent stated that the agreement speaks for itself but denied drafting it as alleged by petitioner.

¶ 10 Respondent also filed his response to petitioner's request for the admission of facts and genuineness of documents on May 11, 2015. In response to the request to admit paragraph 11 (included above) respondent replied that he "does not have sufficient knowledge to form a belief as to the truth or falsity of the allegations in [p]aragraph [11]."

¶ 11 In regard to petitioner's motion to bar respondent from maintenance pursuant to sections 5/504 and 5/510(c) of the Act, respondent admitted to executing the Relationship Commitment on November 2, 2010. However, respondent denied that the Relationship Commitment created a continuing, conjugal relationship because the document merely contemplates a future relationship with Yen. Respondent further admitted executing the addendum on December 14, 2010, but denied that this illustrated a continuing, conjugal relationship because the addendum merely postponed the contemplated relationship, which respondent contends was never entered into. Respondent further stated that any financial transfers he made to Yen were for business purposes only and that he did not return to Vietnam until January 2014.

¶ 12 The trial court held a hearing on May 28, 2015, regarding petitioner's motion for partial summary judgment. Following argument from the parties, the trial court found that there was some issue of material fact as to whether respondent had a claim to some portion of the equity in the Shelburne home and denied that portion of petitioner's motion for summary judgment. As to the barring of maintenance to respondent, the court related the following:

“With respect to the portion of the motion for partial summary judgment regarding the bar of maintenance, the trial court found that “due to conjugal relationship, there is caselaw, which I will acknowledge, out there which sets forth certain actions, which in the absence of other actions, would allow the Court to establish a conjugal relationship.

That being said, I do not think those are the only factors that can indicate a conjugal relationship.

It is very clear from the document which is admitted in the request to admit genuineness of documents, as genuine by Mr. Rev, that he has taken all of the steps to establish a conjugal relationship.

The fact that he's gone further and taken additional steps in furtherance of that contract, with regard to moneys, with regard to spending time with the individual in Vietnam, although even though he says that it's only for business that he was in Vietnam, he wasn't there to see her, the Court finds that there is a continuing conjugal relationship between Mr. Rev and \*\*\* Miss Yen.

[S]o for that reason, the Court grants the partial summary judgment with regard to the bar to maintenance.”<sup>1</sup>

¶ 13 On September 24, 2015, the trial court scheduled a January 13, 2016, hearing date to commence trial on petitioner's petition for dissolution of marriage. On January 12, 2016, respondent filed a motion in *limine* to vacate the trial court's order granting partial summary judgment on the issue of maintenance with respect to the existence of a continuing conjugal relationship and a *de facto* marriage. On January 13, 2016, the trial court ruled to allow respondent to make an offer of proof regarding the issue of maintenance. From January 13-15, 2016, the trial court heard testimony from the parties and other witnesses.

¶ 14 Over the course of the trial's three days, the only testimony relevant to this appeal came from the parties themselves. Following petitioner's testimony laying the grounds for irreconcilable difference, Respondent testified under direct examination as an adverse witness on direct. Respondent testified that petitioner was a doctor with her own medical practice when the

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<sup>1</sup> Respondent appealed the trial court's grant of partial summary judgment on the issue of maintenance to this court but was dismissed for lack of jurisdiction pursuant to Supreme Court Rule 304(b).

parties got married. He recalled that petitioner owned the Chicago home prior to their marriage and held the home in her name only. Respondent acknowledged his signing of the prenuptial agreement and remembered that the agreement listed petitioner's non-marital assets as the Chicago home and her medical practice. He admitted that petitioner made all mortgage payments related to the Chicago home, as well as his failure to contribute any funds to the purchase of the Shelburne home. He further admitted that the Shelburne home was purchased with the funds earned from petitioner's sale of the Chicago home as well as \$25,000 from an account that respondent could not recall the origin.

¶ 15 Petitioner next testified under direct examination. She testified similarly to respondent as to her purchase of the Chicago home prior to the parties' marriage with solely her funds and titled the home solely in her name. She and respondent resided in the Chicago home together for about six months prior to the marriage. She spoke to the content of the parties' prenuptial agreement by relaying that she signed the agreement on August 11, 1994, and listed the Chicago home and her medical practice as her non-marital assets. Petitioner recalled signing the August 6, 2000, agreement prior to closing on the Shelburne home. Although she did not know who had prepared the agreement, she acknowledged that respondent had signed a waiver of homestead regarding the Shelburne home and never made a single financial contribution towards that home or any household expenses at any time. Under cross-examination, petitioner admitted that her medical practice had accounts receivable. On re-direct, she explained that the accounts receivable were debts owed to her medical practice for work done for patients but not yet collected. She explained that income regarding these outstanding accounts receivable was not declared until actually received, but the chance of ever collecting money on these accounts was greatly diminished after 90 days of non-payment. Petitioner also reiterated on direct that

respondent never fulfilled any part of the agreement regarding the Shelburne home, nor was he ever employed during the parties' marriage, save for a six month period in 2000 in which none of respondent's income was contributed to any part of the household expenses.

¶ 16 Respondent was then called to testify again on direct examination by his attorney. He testified to traveling to Vietnam in 2007 to set up a software company. He thought that the business lasted until sometime in 2012. Respondent never produced any revenue from this venture. He also admitted that he never contributed money to the household expenses during his marriage to petitioner because she took care of all of the bills.

¶ 17 The trial court then heard respondent's offer of proof concerning the grant of summary judgment barring respondent from maintenance. Respondent testified that he met Yen when trying to set up his software business in Vietnam. Yen helped respondent with language translation. He then hired her as his human resources manager in 2009. Respondent then admitted that he entered into a sexual relationship with Yen in May 2010; although he never lived with her, traveled or spent holidays with her. He admitted to spending the night with Yen on a few occasions during their sexual relationship. Respondent recalled that he signed the Relationship Commitment and its subsequent addendum but claimed to only have done so due to feeling his life was in danger.

¶ 18 He then said that he left Vietnam in December 2010 and did not return until January 2014. During this hiatus, he sent Yen funds for what he thought was related to the software business but never saw her during this time. Upon his return to Vietnam in 2014, respondent recalled having a brief sexual relationship with Yen that lasted until his return to the U.S. in April 2014. During the 2014 relationship with Yen, respondent testified that the two did not live or travel together. Respondent claimed that nothing noted in the Relationship Commitment ever



actually happened. He never undertook any marriage ceremony with Yen as illustrated in the Relationship Commitment, nor did he file for divorce from petitioner as he had described he would in the agreement. He testified that he felt pressured to sign the Relationship Commitment and its addendum because Yen had political influence in Vietnam that could prevent his software company from acquiring certain incorporation status. Additionally, respondent said that Yen discussed intentionally sabotaging his tax documents in Vietnam in such a way that he could somehow be harmed or killed as a result.

¶ 19 Respondent concluded his offer of proof by testifying that he never intended anything but a casual sexual affair with Yen. He claimed to never have fulfilled any of the Relationship Commitment's requirements of him. His signing of the addendum was done because he wanted to return to the U.S. and Yen would not return his passport to him unless he signed. Upon his acquiescence to signing the addendum, she relented and he was able to return.

¶ 20 Petitioner was then called again to testify by respondent's attorney. Petitioner acknowledged that her medical practice had an accounts receivable balance of \$153,000 as of November 2015. On cross-examination by petitioner's attorney, she again stated that the amounts reflected as owed on her practice's accounts receivable balance were not declared as income until paid to her. At the conclusion of petitioner's testimony, the parties were directed to issue written closing arguments. The trial court issued its final judgment and letter opinion on March 14, 2016.

¶ 21 The trial court indicated in its letter opinion that it had considered all evidence, witness credibility, exhibits, arguments, applicable case and statutory law. Relevant here, the trial court found the medical practice and the Shelburne home to be petitioner's non-marital property. As to the medical practice, the trial court found:

“\*\*\* [B]y testimony, the parties entered into a valid pre-nuptial agreement. Although [respondent] challenged the validity of the agreement, none of his testimony was credible that he was anything other than an informed and willing signatory. [Respondent] also raises the specter that Laura M. Cozzi, M.D., P.C. is a different business from the [business] listed in the pre-nuptial agreement. The Court was presented with no evidence, beyond [respondent’s] speculation, that any other medical practice, other than the current entity, owned by [petitioner] has ever existed.”

As to the Shelburne home, the trial court found:

“The pre-nuptial agreement of the parties makes clear that the [Chicago home] was the non-marital property of petitioner. Respondent admitted, through his failure to deny, in his response to petitioner’s request to admit that 1) the [Chicago home] was purchased by [petitioner] prior to [the parties’ marriage] and 2) the funds for the purchase of the [Shelburne home] came solely from the proceeds of the [Chicago home]. Additionally, the [Shelburne home] is titled in [petitioner’s] name alone and the mortgage and note are solely in her name. It is clear from the above that [petitioner] never donated the funds from the sale of the [Chicago home] to the marital estate and that pursuant to 750 ILCS 5/503(a)(2), intended it to be property acquired in exchange for property acquire before the marriage. [Respondent] argues that \*\*\* he should be entitled to a share of any appreciation on the property’s value, as the mortgage and property tax payments were all made out of marital funds. Had [respondent] ever contributed to the marital estate for the purpose of support or upkeep of the household this argument might carry some weight. However, by his own testimony, [respondent] kept all of the income he earned in the marriage segregated. Although, albeit only for relatively short period, [respondent] was

earning \$6000 to \$7000 per month, he never contributed to either the mortgage or taxes for the [Shelburne home]. Respondent also failed to offer any evidence as to what portion, if any, of the increase in value to the [Shelburne home] is attributable to contributions from the marital estate.”

Later in its letter opinion, the trial court stated, “The Court has by summary judgment barred respondent from receiving maintenance.”

¶ 22 On April, 13, 2016, respondent filed an eleven-count petition for reconsideration of the judgment for dissolution entered by the court on March 14, 2016. Relevant here, the petition moved for the court to reconsider (1) its finding that the Shelburne home was petitioner’s non-marital property; (2) the barring of maintenance to respondent; and (3) failing to include accounts receivable from petitioner’s medical practice as marital assets. On June 1, 2016, the trial court held a hearing on respondent’s petition for reconsideration. As to respondent’s argument concerning the Shelburne home as marital property, the trial court stated that it found respondent had admitted petitioner purchased the property solely with funds from the sale of the non-marital Chicago home in his response to petitioner’s request for admissions. The court stated “[t]o merely say I have insufficient information to admit or deny it deems an admission.” After hearing arguments on the remaining counts in the petition, the trial court denied the above-listed counts relevant to this appeal. Respondent timely appealed to this court.

¶ 23

## II. ANALYSIS

¶ 24 As noted above, respondent raises three contentions in this appeal. Respondent contends that: (1) the trial court erred in failing to recognize, classify, and distribute petitioner’s account receivable in her medical practice; (2) the trial court’s classification of the Shelburne home as petitioner’s non-marital property was against the manifest weight of the evidence; and (3) the

trial court erred in granting petitioner's motion for partial summary judgment, barring respondent from seeking maintenance. We will address respondent's first two contentions related to the trial court's classification and non-classification of certain assets first.

¶ 25 Classification of Property

¶ 26 Respondent's first contention is that the trial court erred in failing to recognize, classify, and distribute \$153,000 in accounts receivable that petitioner had in her medical practice. Respondent argues that accounts receivable are divisible assets, whether labeled as income or retained earnings, because income earned before the entry of judgment and collected after is a divisible asset.

¶ 27 The disposition of property in a dissolution of marriage proceeding is governed by section 503 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/503 (West 2016)). All property owned by the parties in a dissolution proceeding belongs to one of three estates—the husband's estate, the wife's estate, or the marital estate. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641–42 (1993). Before a court may dispose of property upon the dissolution of marriage, it must determine whether the property is marital or non-marital. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000). After the trial court classifies the property, it awards each spouse their non-marital property and divides the marital property into just proportions. 750 ILCS 5/503(d) (West 2016). A trial court's classification of property as marital or non-marital will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 28 Respondent points to our supreme court's holding in *Schneider* as binding precedent on his contention that petitioner's accounts receivable are marital assets to be divided among the parties. *In re Marriage of Schneider*, 214 Ill. 2d 152 (2005). Unfortunately for respondent, the holding in *Schneider* does not speak to the sort of issue that is being presented in this case. In *Schneider*, one of the contested issues was the valuation of appellant's dental practice. *Schneider*, 214 Ill. 2d at 155. The trial court in *Schneider* failed to include accounts receivable when making its valuation of appellant's dental practice. The appellate court held that accounts receivable are business assets and should have been included in the valuation of the dental practice. *Id.* at 160. The supreme court agreed with the appellate court and held that "[a]lthough accounts receivable have not been collected, they are assets that have been earned and have a known value and, thus, are distinguishable from future earnings or income-generating ability. Because accounts receivable have a known value, a court can properly consider accounts receivable as assets of the business." *Id.* at 169. The supreme court's holding in *Schneider* stands for the proposition that accounts receivable are to be considered when determining the value of a marital asset, in that case a dental practice. *Id.*

¶ 29 In the present case, the valuation of petitioner's medical practice is not at issue. However, we do find *Schneider* instructive in the present case because the supreme court clearly held that accounts receivable are assets of the business to which they have been earned, although not collected. *Id.* Here, the trial court specifically found petitioner's medical practice to be her non-marital property subject to a valid pre-nuptial agreement. The only evidence presented to the trial court regarding the accounts receivable was petitioner's acknowledgement that \$153,000 in accounts receivable existed as of November 2015. There is no dispute that this amount represents a value for services rendered by petitioner but never collected. Based on our supreme

court's holding in *Schneider*, the accounts receivable and their known value are considered assets of petitioner's medical practice. See *Id.* Respondent makes no argument here that petitioner's medical practice is anything but her non-marital property and that finding is not against the manifest weight of the evidence. Therefore, not classifying the accounts receivable was not against the manifest weight of the evidence, nor necessary for the court to consider as related to the facts of this case.

¶ 30 Even if we were to agree with respondent that the accounts receivable from petitioner's medical practice are subject to reimbursement under section 503(c)(2) of the Act, the marital estate would still not be entitled to reimbursement from petitioner's non-marital business. When determining whether the marital estate is entitled to reimbursement from a non-marital business for the contribution of personal efforts of a spouse, the court may inquire as to whether the spouse was reasonably compensated by the business for those efforts. *In re Marriage of Steinberg*, 299 Ill. App. 3d 603, 617 (1998). If the spouse has already been reasonably compensated for the personal effort, no reimbursement is necessary. *Id.* The rationale of this principle is that a spouse's salary obtained from the non-marital business during the course of marriage is marital property and, thus, the marital estate has already been compensated. *Id.* Here, there can be no doubt, based on respondent's own testimony, that petitioner has reasonably compensated respondent throughout the marriage through her medical practice. Respondent, save for a short stint of employment in which he contributed nothing financially to the marriage, never had any income from any source at any time. Based on the testimony in the present case, there can be no doubt that respondent has already been reasonably compensated, and no reimbursement from the value of petitioner's medical practice's accounts receivable would be warranted.

¶ 31 Respondent next contends that the trial court's classification of the Shelburne home as petitioner's non-marital property was against the manifest weight of the evidence. Respondent argues that the Shelburne home was purchased during the marriage and the funds used to purchase that home were not entirely non-marital. Petitioner used \$25,000 of marital funds to effectuate to sale of the Shelburne home. Further, respondent argues that this created a presumption via section 503(b)(1) of the Act that the Shelburne home is marital property that can only be overcome through clear and convincing evidence that it falls within a statutory exception listed in subsection 503(a) of the Act. Respondent also argues that the since the Shelburne home was purchased with both marital and non-marital funds, the funds have been commingled into the Shelburne home resulting in the loss of identity of the contributing estate and, thus, transmutes the Shelburne home to marital property pursuant to section 503(c) of the Act.

¶ 32 Again, a trial court's classification of property as marital or non-marital will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 33 Section 503(b)(1) of the Act provides: "For purposes of distribution of property, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage is presumed marital property." 750 ILCS 5/503(b)(1) (West 2016). This presumption may be overcome by a showing through clear and convincing evidence that the property was acquired by a method listed in section 503(a) of the Act. *Id.*

¶ 34 Section 503(a) of the Act provides that marital property is all property acquired by either spouse subsequent to the marriage, except:

“(2) property acquired in exchange for property acquired before the marriage.” 750 ILCS 5/503(a)(2) (West 2016).

¶ 35 Here, the trial court found in its letter opinion that petitioner never donated the funds from the Chicago home to the marital estate. The court went on to find that the Shelburne home was intended to be property acquired in exchange for funds from the non-marital Chicago home pursuant to section 503(a)(2) of the Act. The court also found that although petitioner used marital funds to pay the mortgage and property tax on the Shelburne home, respondent never contributed any support to the household and failed to offer any evidence as to what, if any, increase in value to the property was attributable to contributions from the marital estate. Yet, if it is true that petitioner did use \$25,000 from an account to complete the sale of the Shelburne home, we do not agree with respondent that this creates an issue that the trial court’s findings were against the manifest weight of the evidence.

¶ 36 Petitioner filed a request for the admission of facts and genuineness of documents pursuant to Supreme Court Rule 216. Paragraph 11 of the request asked respondent to admit that the funds for the purchase of the Shelburne home came solely from the sale proceeds of the Chicago home. In response to petitioner’s request for the admission of facts and genuineness of documents, respondent stated that he “does not have sufficient knowledge to form a belief as to the truth or falsity of the allegations in [p]aragraph [11].” Rule 216(a) allows a party to serve another party with a written request for the admission “of the truth of any specified relevant fact set forth in the request.” Ill. S.Ct. R. 216(a) (eff. July 1, 2014). A party responding to a request to admit must provide, within 28 days of service “(1) a sworn statement denying specifically the



matter of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) written objections.” Ill. S. Ct. R. 216(c) (eff. July 1, 2014). Even if the admission of a fact may give rise to an adverse judgment, failure to properly respond to a request for admission of a fact constitutes a binding omission. *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 239 (1998). Admissions created by the operation of Rule 216(c) are considered binding judicial admissions. *Zwicky v. Freightliner Custom Chassis Corp.*, 373 Ill. App. 3d 135 (2007).

¶ 37 Here, respondent’s response to paragraph 11 of petitioner’s request for admissions was deemed an admission that the Shelburne home was acquired solely with funds from the sale of the Chicago home. Even if respondent lacked sufficient knowledge to form a belief as to the truth or falsity of petitioner’s assertion, the request still called for the admission of a fact. See *Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1044 (1999) (assertion that defendant’s failure to observe a red light and the resulting collision caused plaintiff’s injuries of over \$9,900 in medical expenses and property damage deemed admitted by defendant’s inadequate response which failed to submit sworn statements specifically denying those matters as required by Rule 216). Respondent’s response to paragraph 11 of petitioner’s request for admissions was improper based on the requirements of Rule 216(c). See Ill. S. Ct. R. 216(c) (eff. July 1, 2014). Therefore, respondent’s admission concerning the acquisition of the Shelburne home, his admission that he never held title to the Chicago home, the absence of his name from the deed to the Shelburne home, and the voluminous testimony that he contributed nothing financially in any way to the household throughout the parites’ marriage make the trial court’s finding that the Shelburne home is petitioner’s non-marital property in line with the manifest weight of the evidence presented.

¶ 38 While our analysis of this issue could end here, respondent would still have the problem of having failed to either plead or prove that the marital estate was entitled to reimbursement. Respondent stated that he believed that marital funds were used to complete the purchase of the Shelburne home. Respondent did nothing to identify what account this money originated from, how much money beyond his estimate of \$25,000 was used, or produce any evidence at all that could assist him in proving that the marital estate was entitled to reimbursement.

¶ 39 We now move on to respondent's contention that the trial court erred in granting partial summary judgment concerning the bar to maintenance.

¶ 40 Bar to Maintenance

¶ 41 Respondent contends that the trial court erred in granting petitioner's motion for partial summary judgment, barring respondent from seeking maintenance pursuant to section 510(c) of the Act, alleging that respondent was involved in a continuing, conjugal relationship with Yen. 750 ILCS 5/510(c) (West 2016). Respondent argues that the trial court's ruling was made solely on the basis of the existence of the Relationship Commitment contract and the determination of fact against respondent concerning his sending of money to Vietnam for business purposes.

¶ 42 Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). "The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of material fact exists." *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 14. A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or where reasonable persons might draw different inferences from the undisputed facts. *Id.* Although summary

judgment can aid in the expeditious disposition of a lawsuit, it is a drastic measure and, therefore, should be allowed only where the right of the moving party is clear and free from doubt. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A circuit court's order granting summary judgment is reviewed *de novo*. *Illinois State Bar Ass'n Mutual Insurance Co.*, 2015 IL 117096, ¶ 14.

¶ 43 Section 504(a) of the Act contains a list of factors the trial court should consider in determining pre-dissolution maintenance. See 750 ILCS 5/504(a) (West 2016). Included in the list of factors enumerated in section 504(a) is a catch-all clause which allows the trial court to consider “any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a)(14) (West 2016). In the present case, petitioner’s motion for partial summary judgment included citation to that very language. But the trial court’s ruling relied solely on section 510(c) regarding the bar to maintenance for respondent without considering section 504(a) at all. As petitioner’s motion for partial summary judgment was raised in a pre-dissolution setting, an analysis of the propriety of maintenance under section 504(a) was appropriate. Nevertheless, we will examine the trial court’s ruling within the confines of section 510(c).

¶ 44 Section 510(c) provides that “the obligation to pay future maintenance is terminated \*\*\* if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis.” 750 ILCS 5/501(c) (West 2016). The purpose of the statute is not to control public morals, but to prevent the inequity created when the spouse seeking maintenance becomes involved in a *de facto* marriage. *In re Marriage of Miller*, 2015 IL App (2d) 140530 ¶ 39. A spouse has abandoned his rights to support from the prior marriage when the relationship has achieved a permanence sufficient for the trial court to conclude that it has become a *de facto* marriage. *Id.* The party seeking the termination of maintenance has the burden of establishing

that the receiving spouse is in a *de facto* marriage with another person. *Id.* A court examines the totality of circumstances in determining whether the petitioner has met this burden and considers the following factors: (1) the length of the relationship; (2) the amount of time spent together; (3) the nature of activities engaged in; (4) the interrelation of personal affairs (including finances); (5) whether they vacation together; and (6) whether they spend holidays together. *Id.*

¶ 45 It is important for courts to consider that intimate dating relationships likely involve facts and circumstances that fit each of the six factors listed above. *Id.* at ¶ 46. The factors are not sufficient to encapsulate the totality of the circumstances in all cases in which the petitioner seeks to terminate maintenance through section 510(c) of the Act. *Id.* at ¶ 47. Courts must weigh the seriousness or magnitude of each factor to determine whether a spouse seeking maintenance is cohabitating with another person on a resident, continuing conjugal basis such to establish that they have entered a *de facto* marriage. *Id.* at ¶ 50. An intimate dating relationship is not a *de facto* marriage and not a ground upon which to terminate maintenance. *Id.* at ¶ 51. For purposes of determining whether a spouse seeking maintenance is in a *de facto* marriage or merely an intimate dating relationship, intimate dating relationships have companionship and exclusive intimacy, while *de facto* marriage relationships come with a deeper level of commitment, intended permanence, and financial or material partnership that would come in the form of a shared household. *Id.* at ¶ 55. The six factors can be present in an intimate dating relationship as well as a *de facto* marriage. *Id.* at ¶ 60.

¶ 46 We believe a genuine issue of material fact exists as to whether respondent was entitled to maintenance in the first place pursuant to section 504(a) as this is a pre-dissolution issue. The trial court made no such analysis of respondent's entitlement to maintenance pursuant to that section and indicated in its ruling that respondent was barred from maintenance pursuant to

section 510(c) and relied on the existence of the Relationship Commitment in coming to that conclusion. We find that the trial court's sole reliance on the Relationship Commitment in granting partial summary judgment to bar maintenance to respondent was misplaced.

¶ 47 Even if the trial court's reliance on the Relationship Commitment was appropriate, issues of material fact remain as to whether respondent was engaged in a resident, continuing conjugal relationship with Yen when examined against the factors discussed in *Miller*. As to the first factor, the actual length of respondent and Yen's relationship is unclear based on the record in this case. Respondent met Yen in Vietnam sometime after he started his software company. He began having sexual relations with her in 2009, left Vietnam in 2010 only to return in 2014 and engage in sexual relations with her again. Similarly, the second factor is indeterminate as the amount of time respondent spent with Yen during their relationship raises questions of material fact as well. Aside from respondent's admission that he was having sex with Yen, it is unclear what, if any, other activities the couple was engaged in, such that an analysis of the third factor would be incomplete. There was no allegation by petitioner, nor did respondent admit to the interrelation of personal affairs with Yen beyond sending money to Vietnam for what respondent claimed was business related. Perhaps the execution of the Relationship Commitment and its subsequent addendum could reflect the interrelation of personal affairs but material facts still exist as to what sort of relationship they were actually engaged in, making an analysis of the fourth factor also incomplete. As to both the fifth and sixth factors of the analysis, respondent outright denied ever traveling or spending holidays with Yen.

¶ 48 Based on the foregoing, we hold that the trial court erred in granting partial summary judgment to petitioner, barring respondent from seeking maintenance pursuant to section 510(c) of the Act. There remain genuine issues of material fact as to whether respondent was in a *de*

*facto* marriage with Yen based on this court's analysis in *Miller* so as to give rise to a finding of a resident, continuing conjugal relationship sufficient to bar maintenance under the Act. See 750 ILCS 5/510(c) (West 2016); *Miller*, 2015 IL App (2d) 140530.

¶ 49

### III.CONCLUSION

¶ 50 For the reasons stated, we affirm the judgment of the circuit court of Du Page County in part. Reverse and remand in part.

¶ 51 Affirmed in part. Reversed and remanded in part.