2018 IL App (2d) 180122-U
No. 2-18-0122
Order filed October 16, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARGARITA SOLIS MOORE, Petitioner-Appellee, and NORMAN T. MOORE, Respondent-Appellant.	)	Appeal from the Circuit Court of Kane County. No. 10-D-363 Honorable Elizabeth K. Flood, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of respondent's petition to terminate maintenance because petitioner was in a *de facto* marriage was not against the manifest weight of the evidence: although the court discredited petitioner's testimony as to the nature of the relationship, respondent failed to meet his burden of establishing that in fact it rose to the level of a *de facto* marriage as opposed to an intimate dating relationship.

¶ 2 After 19 years of marriage, petitioner, Margarita Solis Moore, petitioned to dissolve her marriage to respondent, Norman T. Moore. The court granted that petition and awarded petitioner monthly maintenance of $1800. In doing so, the court noted that respondent's obligation to pay maintenance would terminate upon the showing of any occurrence delineated

in section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(c) (West 2014)). Over two years later, respondent petitioned to modify maintenance. In that petition, he claimed, among other things, that maintenance should be terminated because petitioner was living with her boyfriend and sharing expenses (*id.*). Following a hearing, the court denied respondent's request to terminate maintenance, and this timely appeal followed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Evidence presented at the hearing revealed that petitioner is in an on-again, off-again relationship with Christopher Dylla. Petitioner and Dylla, who were friends when they worked together at a bank, began dating in the beginning of 2015. They initially saw each other a few times a week, but now they go out about once per week. Dylla stays over at petitioner's house once and sometimes twice per week, but petitioner has never spent the night at Dylla's home. Dylla, who earns $75,000 per year, lives with his parents rent-free. Dylla does not keep any personal belongings at petitioner's home, and he has never helped petitioner pay rent or any other bills with the exception of one veterinarian bill for which petitioner might have reimbursed him.

¶ 5 In May 2015, petitioner opened a savings account where she was the beneficiary and Dylla was the trustee. Petitioner indicated that she set up the savings account in this manner because she wanted to save money to buy a house, and this way she was prohibited from spending the money in the account freely. Earlier, in March 2015, petitioner added Dylla to another account so that Dylla could transfer money from the savings account to this other joint account. With the joint account, petitioner paid her expenses. Although Dylla's name was on both accounts, he neither deposited nor withdrew funds from either account. Moreover, although

two debit cards were issued for the joint account, Dylla testified that he never used either card. Rather, petitioner stated that she used both cards, keeping one in her purse and the other in her car.

¶ 6 In July 2016, Dylla was removed from the joint account, and one of the debit cards ceased being used. Around that same time, petitioner transferred money between the accounts and withdrew from the joint account all of the money, which amounted to over $20,000. That money was put in a cashier's check that petitioner then divided up into smaller cashier's checks that she used to pay her expenses throughout the remainder of 2016.

¶ 7 According to petitioner, Dylla proposed to her in July 2016. Dylla testified that he bought an $8500 engagement ring in February 2016 and proposed soon thereafter or in the fall of 2016. Although petitioner initially accepted Dylla's proposal, the couple has broken their engagement several times. As of the date of the hearing, petitioner thought that they were no longer engaged, but Dylla believed that they were "pseudo[-]engaged." Although petitioner asked Dylla to take the ring back, he refused and has not decided if he is going to take it back. As of the date of the hearing, no wedding date had been set, and petitioner indicated that, although it is possible that she and Dylla would get married, she did not want to marry Dylla at that time.

¶ 8 The parties also indicated that, when they go out to dinner, they either split the check or take turns paying the bill. Dylla buys groceries to make dinner for petitioner and her family a few times per month, spending around $30 each time. Petitioner and Dylla have spent some holidays together at petitioner's house with petitioner's friends and family, and they have celebrated petitioner's children's birthdays. Dylla has bought presents for petitioner's family,

including her children, but according to Dylla, these gifts were not extravagant. Dylla has met one of petitioner's siblings, and petitioner has seen Dylla's parents 20 to 30 times.

¶ 9 The couple also went on vacation together to New Orleans once, and they stayed a couple of nights in Chicago. With regard to the almost-week-long New Orleans trip, Dylla paid for it, and petitioner reimbursed him in cash for her half of the costs.

¶ 10 Based on this evidence, the court denied respondent's request to terminate maintenance, as it found that petitioner and Dylla were not residing together on a resident, continuing, conjugal basis (see 750 ILCS 5/510(c) (West 2014)). In doing so, the court found incredible petitioner and Dylla.[1] Specifically, the court noted:

> "As to [petitioner], I did not find it credible when she testified that she had opened an account with Mr. Dylla for the purpose of saving to try to buy a house, that Mr. Dylla was made a trustee but that there were two debit cards which only she had access to and that she kept one in her house [*sic*] and one in her car.
>
> I did not find it particularly credible that she said that she withdrew $20,000 from an account that had been shared between herself and Mr. Dylla and then, over the course of many months, divided a cashier's check again and again into different cashier's checks in order to pay off bills, although she works at a bank and has many different types of access to different accounts and ways to pay bills.
>
> I did not find it particularly credible that Mr. Dylla *** lives at home with his parents but chooses to spend only two nights a week with his *** long-time girlfriend.
>
> I did not find it particularly credible that there was an $8,000 [*sic*] engagement ring that was passed—given from Mr. Dylla to [petitioner] that no one seemed to

[1] The court also found respondent incredible as to other matters presented at the hearing.

remember the circumstances or date of engagement or any of the circumstances or dates which they testified that the relationship had broken up, continued and then broken up again."

¶ 11 The court went on to observe:

"Although I did not find [petitioner] or Mr. Dylla's testimony particularly credible as to their relationship, there was no positive evidence that allows this Court to make a finding as to exactly what their relationship is.

I don't necessarily—there was information that these two have been dating for a couple of years, that they have spent major holidays together, that there was one account opened between the two of them into which the testimony and evidence only showed that [petitioner] deposited money, not Mr. Dylla.

There was no positive evidence of exactly how many nights the two of them spent together, that there was extensive commingling of funds, that there was any sharing of household expenses. And it is impossible for this Court to determine at this time what exactly the status of their relationship or engagement is.

The case law is clear that this Court has to be able to find positive evidence of a relationship which is basically a de facto marriage. Based on the evidence presented, although I did not find the two witnesses that were cross-examined to be particularly credible, there was no contradictory positive evidence that allows this Court to make the necessary findings that the two of them are currently engaged in a de facto marriage.

Although there is possibly an on-or-off again engagement at this time, it is impossible for this Court to determine how serious they are about that engagement. And

that alone is not enough for this Court to find a *de facto* marriage without other factors present."

¶ 12 II. ANALYSIS

¶ 13 At issue in this appeal is whether respondent's obligation to pay maintenance should have been terminated, because petitioner and Dylla were engaged in a resident, continuing, conjugal relationship (see *id.*). That is, we are asked to consider whether petitioner and Dylla's relationship achieved a level of permanence such that they were *de facto* married. *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 40. In considering that issue, we note that we will reverse the trial court's ruling only if it is against the manifest weight of the evidence. *Id.* A ruling is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the decision is unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 14 The party seeking to terminate maintenance bears the burden of establishing a *de facto* marriage. *Id.* In deciding whether that burden has been met, courts should focus on whether the couple shared a deep level of commitment, an intention to make their relationship permanent, and, unless otherwise explained, a financial and material partnership. *Id.* ¶ 68. The unique circumstances of each case will dictate whether a *de facto* marriage existed. *Id.* ¶ 40.

¶ 15 In resolving the issue raised here, we note that, although the court found neither petitioner nor Dylla credible, and we cannot conclude that that assessment was made in error, that does not mean that respondent satisfied his burden of proof. See *id.* ¶¶ 41, 43-44. Rather, even when the court discredits evidence, it still must consider whether a preponderance of the evidence sustained the moving party's right to terminate maintenance. *Id.* ¶ 43. Respondent simply has not met that threshold.

¶ 16 Specifically, although the evidence revealed that Dylla was added to two of petitioner's bank accounts under suspicious circumstances, nothing indicated that he ever deposited or withdrew funds from either account for his use or to support a household he shared with petitioner. Rather, the evidence indicated that petitioner alone controlled the use of the funds put into both accounts. While we agree with the trial court that it is odd that someone who works at a bank would take the time to obtain several cashier's checks to deplete the funds in the accounts, respondent failed to present evidence that petitioner and Dylla were commingling funds to support a shared lifestyle. Moreover, although we agree with the trial court that it is strange that a grown man earning $75,000 a year would choose to live with his parents and not move into his own home or a home with his long-time girlfriend, the evidence presented established that petitioner and Dylla did not live together. Dylla kept no personal belongings at petitioner's house, and he slept overnight at petitioner's home only one or two nights per week. In order to meet his burden, respondent should have presented evidence from, for example, petitioner's neighbors or her children that established that the couple lived together or spent more than two nights per week at petitioner's home. Further, while Dylla bought groceries for petitioner and her family, bought presents for petitioner's family, paid a vet bill, and paid for vacations he took with petitioner, such facts do not create a *de facto* marriage, as Dylla spent very little on such things or was reimbursed by petitioner for the costs he incurred. Likewise, the fact that petitioner and Dylla spent holidays and special occasions together and met some members of each other's families does not mean that their relationship had obtained a level of permanence sufficient to terminate maintenance. The evidence indicated that Dylla either stopped by petitioner's house on various holidays while she was celebrating with her friends and family or was simply another invited guest. As to meeting each other's families, the fact that

petitioner had encountered Dylla's parents many times is simply inconsequential, as Dylla lived with his parents. Finally, we agree with the trial court that it is peculiar that the circumstances of petitioner and Dylla's engagement were so unclear, especially when we consider that Dylla gave petitioner a very expensive engagement ring that he, at least at the hearing, had no intention of getting back. However, even if we assume that petitioner agreed to marry Dylla at some point, that fact does not mandate a conclusion that petitioner and Dylla's relationship constituted a *de facto* marriage. See *In re Marriage of Bates*, 212 Ill. 2d 489, 505, 524 (2004) (couple that planned to get married someday was not *de facto* married).

¶ 17 When we consider the totality of the evidence presented, we must conclude that, at best, petitioner and Dylla were in an intimate dating relationship. "Intimate dating relationships have companionship and exclusive intimacy, whereas marriage-like relationships, while likewise having companionship and exclusive intimacy (not necessarily sexual but such that the former spouse does not engage in a similar relationship with a third person), also have a deeper level of commitment, intended permanence, and, unless reasonably explained, financial or material partnership (which would most commonly come in the form of a shared household)." *Miller*, 2015 IL App (2d) 140530, ¶ 61. Because intimate dating relationships, unlike *de facto* marriages, are not grounds to terminate maintenance, we conclude that the court's decision not to terminate maintenance was not against the manifest weight of the evidence. See *id.* ¶ 69.

¶ 18 In arguing that the court should have terminated maintenance, respondent contends that the court, after finding that petitioner and Dylla were lying, shifted the burden to respondent to contradict their testimony. To support his position, respondent cites to the fact that the court noted that "no contradictory positive evidence" allowed the court to find that petitioner and Dylla were in a *de facto* marriage. As noted, however, it was indeed respondent's burden to prove that

petitioner and Dylla were not *de facto* married. As the trial court observed, the fact that it rejected petitioner's testimony did not mean that respondent proved his case. See *id.* ¶ 43.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.