

NOTICE

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FILED

June 14, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170742-U

NO. 4-17-0742

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF)	Appeal from the
DIANE CRAMSEY,)	Circuit Court of
Petitioner-Appellee,)	Adams County
and)	No. 12D284
RICHARD CRAMSEY,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court. Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err by denying respondent’s petition to modify his maintenance obligation.

(2) The trial court did not err by denying respondent’s motion challenging petitioner’s responses to requests to admit facts or the genuineness of documents.

¶ 2 On November 20, 2014, the trial court dissolved the marriage of petitioner, Diane Cramsey, and respondent, Richard Cramsey. As part of its dissolution judgment, the court ordered Richard to pay Diane \$4,275 per month in permanent maintenance. On August 7, 2015, Richard filed an amended petition to modify maintenance, alleging he was involuntarily terminated from his employment and was fiscally unable to meet his spousal maintenance obligation. On September 6, 2017, the trial court denied Richard’s petition and he appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 15, 1974, Richard and Diane were married. On October 1, 2012, Diane filed a petition for dissolution of marriage. The record reflects the parties had two children during the marriage, both of whom were emancipated at the time of the underlying proceedings. Contested issues during the divorce involved the division of property and spousal maintenance.

¶ 5 On September 25 and 26, 2014, a trial was conducted in the matter. At that time, Diane was 61 years old and was employed as a part-time substitute teacher, earning approximately \$3,655 per year. Richard was 62 years old and employed as a pharmaceutical representative for GlaxoSmithKline (GSK), earning approximately \$117,000 per year. On October 28, 2014, the trial court issued a memorandum of opinion, setting forth its findings. Relative to maintenance, the court noted the length of the parties' marriage—38 years at the time Diane filed her petition for dissolution—and the parties' ages. It also stated as follows:

“[Richard] has been employed on a full-time basis throughout the marriage, and has always been the primary source of financial support for the parties; that by agreement of the parties, [Diane] had some employment during the marriage, but primarily stayed home with the parties' two children during their school age years; that [Richard] has had a substantially greater earning capacity than [Diane] throughout the marriage; that each party is being awarded a substantial share of the marital assets herein, the majority of which is real estate with a highest and best use of farming and agriculture.”

The court concluded Diane was unable to support herself with the income she earned as a substitute teacher and that an award of permanent maintenance of \$4,275 per month was appropriate.

¶ 6 With respect to the division of marital assets and debts, the trial court accepted the

division proposed by Diane, with some modifications. Consistent with that proposal, the court found Richard should receive marital assets totaling approximately \$3,324,582.21, while Diane should receive marital assets totaling approximately \$2,241,820.86. The court also found that Richard should pay Diane \$125,000 “as a cash settlement.”

¶ 7 On November 12, 2014, Richard filed a posttrial motion. He asked the trial court for a new trial or to reopen proofs so that he could submit additional evidence regarding his employment status. Richard alleged that, following the trial, he received a “ ‘Final Warning’ ” from GSK, dated September 29, 2014, and which described his work performance as “less than proficient.” He was warned to improve his performance or risk “separation from employment.” Richard further alleged that he was given the option of “continuing the discipline or electing to resign by mutual agreement (RMA).” The RMA option included a severance package pursuant to which Richard would receive 52 weeks’ severance pay.

¶ 8 According to Richard, he tentatively accepted the terms of the RMA option on October 1, 2014, believing “that he would not be able to improve his performance sufficiently to maintain his employment under the terms presented to [him] in the Final Warning notification.” However, before his resignation became effective, Richard filed a request with GSK for a medical leave of absence due to his depression and “unstable mental health condition.” He “hope[d] that he would not have to make a final decision regarding the RMA until after the conclusion of his medical leave.” However, on November 6, 2014, he received a letter informing him that he had until November 12, 2014, “to execute the RMA agreement or risk losing the option of receiving” the severance package. Richard alleged he “executed the RMA and his employment with GSK [was] terminated as of November 12, 2014.” Further, he asserted that evidence relat-

ing to his deficient performance with GSK and the termination of his employment was new evidence that was not available at the time of trial.

¶ 9 In connection with his posttrial motion, Richard also asked the trial court to reconsider its award of spousal support. He argued (1) the court's calculation was erroneously based upon a statutory amendment that had not yet taken effect, (2) he had insufficient income to pay the amount awarded (3) the court failed to consider his needs when making the award, and (4) the court failed to consider his lack of future earning capacity.

¶ 10 On November 19, 2014, Diane filed a motion to dismiss Richard's posttrial motion. She argued the motion "did not support the relief requested," in that it did not contain allegations of newly discovered evidence. Rather, she maintained Richard alleged a potential change in circumstances and was, therefore, not utilizing the proper procedure for pursuing his claims. The same day, the trial court conducted a hearing in the matter and granted Diane's motion to dismiss.

¶ 11 On November 20, 2014, the trial court entered its judgment for dissolution of marriage. Again, the court ordered Richard to pay Diane \$4,275 per month in permanent maintenance. It also ordered "[a] lien placed upon the land awarded to [Richard] to secure payment of maintenance." The court attached Diane's proposal for the division of the marital estate to its judgment. Diane's proposal stated Diane had annual earnings of \$3,600 per year while Richard had gross income from GSK of \$117,474 per year, gross Conservation Reserve Program (CRP) earnings of \$30,836, and rental payments of \$25,159.

¶ 12 Additionally, the trial court divided the parties' assets and debts consistent with its previous memorandum opinion. Specifically, the court awarded Richard the following assets:

(1) 552 acres of farmland valued at \$2,428,000; (2) 100 acres of farmland valued at \$320,000; (3) farm equipment valued at \$231,322; (4) 40% of his GSK 401(k) valued at \$210,975.39; (5) 40% of his GSK retirement account valued at \$86,514.80; (6) 40% of the money received from the future sale of cattle; (7) checking and savings accounts held in his name; (8) 40% of an expected crop insurance payment for wheat; (9) specific debts owed to Richard; (10) the cash value of two life insurance policies, totaling \$22,499; (11) a 1982 Chevy truck; and (12) a tax refund of \$1,376.

¶ 13 The trial court ordered Richard to pay Diane a \$125,000 cash settlement. Further, it awarded Diane the following assets: (1) 120 acres of farmland valued at \$1,044,000; (2) 80 acres of farmland valued at \$480,000; (3) 60% of Richard's GSK 401(k) valued at \$316,463.08; (4) 60% of Richard's GSK retirement account valued at \$129,772; (5) her Roth individual retirement account (IRA) and mutual fund account valued at \$52,045; (6) \$5,737.70 for cattle sold by Richard and 60% of money received for cattle to be sold by Richard; (7) bank accounts totaling \$129,434.58; (8) 60% of the money received by Richard for wheat he sold in 2014, totaling \$13,420.96; (9) a CRP payment totaling \$29,796; (10) rent from Richard totaling \$14,791.50; (11) the cash value of three life insurance policies totaling \$32,877; and (12) a 2013 Chevy Equinox.

¶ 14 On May 29, 2015, Richard filed a petition to modify his maintenance obligation. He alleged that, at the time of the judgment of dissolution, he was employed by GSK and, in 2014, earned gross Medicare wages of \$120,681.39 and social security wages of \$117,000. However, Richard asserted his employment with GSK was terminated effective May 22, 2015, due to a reduction in the size of GSK's workforce. He alleged his termination was through no

fault of his own, he had been unable to find alternative employment, and he was fiscally unable to meet his spousal maintenance obligation. On June 9, 2014, Diane moved to strike Richard's petition to modify on the basis that he failed to plead a substantial change in circumstances.

¶ 15 On July 16, 2015, the trial court conducted a hearing and granted Diane's motion to strike. It noted both Richard's posttrial motion and his petition to modify were based on allegations that he lost his employment with GSK. Therefore, the court determined that the issue raised by Richard's petition to modify was "previously determined" and "not a basis for modifying maintenance [because it] did not allege any change in circumstances since that hearing occurred in November."

¶ 16 The trial court, however, allowed Richard leave to amend his pleading and, on August 7, 2015, Richard filed an amended petition to modify his maintenance obligation. He alleged a substantial change in circumstances on the basis that GSK rejected the resignation agreement he executed; he was placed on short-term disability; returned to work for a period of time after being released from short-term disability; and was involuntarily terminated from GSK effective May 22, 2015, due to a reduction in the size of its workforce. Richard alleged he looked for employment elsewhere but was unsuccessful. Further, he asserted that his wages with GSK were approximately \$120,000 per year and "amounted to a majority of his income from all sources." Richard maintained that, due to his termination, he also lost his company car and stipends for internet and cellular phone services. He asserted that he was unable to meet his spousal maintenance obligations.

¶ 17 On August 20, 2015, the trial court conducted a hearing. It found Richard's amended petition to modify appeared to be "substantially the same as the first motion to modify

that was filed *** on or about May 29[, 2015].” The court then ordered the amended petition stricken “pursuant to *res judicata*.” Richard appealed and, on June 14, 2016, this court reversed, finding the factual allegations in Richard’s November 2014 posttrial motion regarding his loss of employment “were significantly different” than those contained within his later motions to modify. *In re Marriage of Cramsey*, 2016 IL App (4th) 150766-U, ¶ 23. Accordingly, we remanded to the trial court with directions that it conduct an evidentiary hearing on Richard’s petition to modify. *Id.*

¶ 18 On August 22 and 23, 2017, the trial court conducted an evidentiary hearing on Richard’s amended petition. The record reflects the evidence deposition of Landy Massey, the director of human resources for GSK, was taken on August 10, 2017, and admitted into evidence at the hearing. Massey testified that, in approximately May 2015, there was a reduction in GSK’s workforce. At that time, GSK had approximately 5,000 employees in the United States. Richard was part of GSK’s U.S. pharmaceutical sales force, which was comprised of approximately 2,500 employees.

¶ 19 Massey testified she reviewed various documents that pertained to Richard’s employment with GSK and which were provided to her by the parties. She identified the documents as the types of records that were regularly made in the course of business at GSK. Massey identified a letter dated March 23, 2015, and prepared by Michelle Killian, GSK’s vice president. The letter was addressed “To Whom It May Concern” and stated that GSK was undergoing a “reduction in force.” It further stated that its purpose was “to confirm that [Richard’s] employment [with GSK] was ended on [May 22, 2015] as part of this reduction in the size of [GSK’s] workforce.” Massey testified that the decision “to go through a restructuring” was made by GSK’s

executive leaders and that hundreds of employees were impacted.

¶ 20 Massey next identified a cover letter and “Benefits at Termination of Employment Package,” displaying Richard’s name and employee identification number. The packet contained information relating to severance pay and medical/dental benefits and a general release. Massey testified the offering of a severance package was part of GSK’s protocol for workers who were displaced during a downsizing and was offered to Richard as a result of GSK’s global reduction in workforce. To obtain severance pay and medical benefits, Richard was required to sign a general release, which he did on May 21, 2015. Massey testified severance packages were not given to employees who voluntarily left GSK or who were discharged for cause. Further, she stated the termination packet correctly stated that approximately 2,000 positions were eliminated as part of the restructuring. Massey noted that Richard was considered to be “field-based staff” and that “several hundred” of GSK’s “field-based staff” employees were terminated.

¶ 21 Massey next identified an “Older Worker Benefit Protection Act Disclosure” dated March 23, 2015. She testified that disclosure was also part of the severance and termination packet that Richard received. She asserted it was not given to employees who voluntarily left GSK or who were discharged for cause. Massey defined a “discharge for cause” as occurring when someone violated policy or had not fulfilled the requirements of his or her employment. She testified that Richard did not voluntarily leave GSK and was not discharged for cause; rather, Richard was “displaced” due to GSK’s “global downsizing.”

¶ 22 On examination by Diane’s counsel, Massey testified she was located at GSK’s corporate headquarters in North Carolina while Richard worked for GSK in Illinois. She had no personal dealings or involvement with Richard and did not know who Richard’s immediate su-

pervisor would have been. Massey further testified that she reviewed Richard's disciplinary records prior to her deposition. She noted GSK's disciplinary process was progressive. If an employee was not performing satisfactorily, he or she would receive "coaching" and assistance from a manager to help improve performance. If no improvement was made, the employee would be terminated.

¶ 23 Massey testified Richard's disciplinary record included a September 29, 2014, letter, which she identified as a final warning issued to Richard by Steve Bradford, GSK's field vice president. She agreed that the letter stated Richard was expected to improve his performance in various specific areas. Massey did not know whether Richard ever improved his performance. Further, she acknowledged that Richard was presented with an RMA offer. Massey testified that an RMA was offered to an employee when he or she was "on progressive performance management." She stated Richard accepted an RMA offer and had an actual termination date. Massey was aware, however, that Richard was placed on short-term disability in October 2014, which lasted until January 27, 2015.

¶ 24 Massey further identified emails between Richard and GSK employees. In an email dated February 23, 2015, following Richard's release from short-term disability, a human resources manager for GSK wrote the following to Richard and another individual: "Per our discussions[,] this time looks good for everyone to re-visit the Final Warning/RMA issued last September." Additionally, a May 7, 2015, email from Richard to Catherine Berry, a regional manager for GSK, stated as follows:

"Looking over the documents you sent following our phone conversation on February 25th, there is no copy of what you read to me that I am involuntarily

being terminated from GSK. I need a copy to document that I can no longer meet the my [*sic*] court ordered maintenance to my ex-wife.

Could you email me that document or some document that I am involuntarily being released from GSK.”

Massey testified in February 2015, Richard would have received oral notification of his termination from GSK.

¶ 25 Massey also stated that the decision as to which employees to terminate “was based on the business case and criteria in the appointment and selection process.” She stated a “criteria” was developed for selecting employees “for roles in the new organization” or for “elimination.” Massey agreed that factors that were considered included, among other things, employee performance and employee preference for displacement. When questioned as to whether she reviewed any documents indicating why Richard was displaced, Massey testified she reviewed “guiding principles, the criteria for how [GSK] made the selection decisions.” According to Massey, Richard was selected for termination “[b]ased on the criteria for the field employees.”

¶ 26 Massey did not know who the March 23, 2015, letter addressed “To Whom It May Concern” went to and she did not know what prompted the letter to be drafted. She further testified that Richard’s GSK job duties included “calling on” GSK customers. Once Richard was terminated, GSK continued to “call on [its] customers” only with fewer employees. Massey did not know how many employees worked in the Illinois area previously occupied by Richard or how many employees GSK had in that area prior to its downsizing.

¶ 27 On redirect, Massey testified Richard’s RMA was ultimately rejected by GSK and

never implemented. She denied that either the RMA or Richard's short-term disability had anything to do with his May 2015 "severance." Further, Massey, stated that the cause of Richard's May 2015 severance was "substantial downsizing and reduction of headcount" by GSK.

¶ 28 Next, Richard presented the testimony of Danielle Fler, a self-employed, certified public accountant. Fler testified her practice involved reviewing social security benefits for clients. She stated, on September 30, 2018, Richard would reach full retirement age, age 66, and be entitled to social security benefits of \$2,596 per month. However, if he were to start drawing benefits as of the date of the hearing, he would be entitled to \$2,408.50 per month. Fler noted that 50% of that amount, \$1,204.25, was "the divorced spouse benefit." However, because Diane was not at full retirement age, her divorced spouse benefit at the time of the hearing would be \$1,036.98 per month.

¶ 29 Fler further testified that she dealt regularly with IRAs and Roth IRAs as part of her accounting practice. At age 59 ½, an IRA owner can withdraw distributions with no penalty. Fler stated Diane was over 59 ½ and had a traditional rollover IRA and a Roth IRA. In July 2017, Diane's traditional IRA was valued at \$521,311.00, and her Roth IRA was valued at \$57,947.47. Fler made projections for withdrawals from Diane's two accounts and estimated that "assuming that [Diane] would invest in something that would yield a 3 or 4% return annually," her traditional IRA would earn approximately \$15,639 per year (at 3%) or \$20,852 per year (at 4%). Fler noted that amount of income could be withdrawn from the IRA account each year without invading the principal. Further, she estimated that combining Diane's traditional and Roth IRAs would generate approximately \$17,378 per year (at 3%) or \$23,170 per year (at 4%) while the principal in those accounts remained intact.

¶ 30 Fler described a third scenario in which she determined amounts Diane could expect to receive if she began taking distributions from her IRA accounts. She based her calculations on Diane having a life expectancy of 22.6 years and, again, assumed “a yield of 3% or 4%.” Fler estimated that, from the traditional IRA, Diane could receive about \$31,703 a year (at 3%) or \$35,089 a year (at 4%). If Diane’s IRAs were combined she could expect annual distributions of \$35,227 (at 3%) or \$38,989.50 (at 4%).

¶ 31 Fler testified her assumptions of 3% and 4% returns on Diane’s accounts were “very conservative.” Further, she stated she used life expectancy tables from the Social Security Administration when determining Diane’s life expectancy.

¶ 32 On cross-examination, Fler acknowledged that there would be tax consequences if Diane were to take money out of her accounts. Also, taking distributions from the accounts would deplete them. Fler testified that, although she usually considered the need to pay for nursing home costs when making calculations for clients, she did not consider nursing home costs when calculating Diane’s distributions.

¶ 33 Mark Field testified he was the president and chairman of the board of Farmers Bank in Liberty, Illinois. He was familiar with both parties and testified Richard owed the bank a total of \$251,000.62. According to Field, Richard owed \$230,000 as a result of a loan he obtained to pay his divorce settlement and consolidate debt; \$12,343.10 in connection with a line of credit “[f]or the 2017 crop production”; and \$8,657.52 for money he borrowed to pay two months worth of spousal maintenance payments. Field projected Richard’s interest on all three loans as \$9,555 for the year.

¶ 34 Field further testified that he routinely assisted farmers with preparing cash flow

projections. He helped Richard prepare a cash flow projection for his farm for 2017, utilizing Richard's 2015 and 2016 tax returns. According to Field, he and Richard initially determined the farm's gross income by calculating amounts Richard would receive in CRP payments from the government and pasture rent. They also estimated Richard's crop income as \$47,598, resulting in a total projected income of \$89,179. Field testified they further determined that Richard had cash expenses, totaling \$89,846. He described the cash flow projection as demonstrating "a break-even year" for Richard's farm. However, Richard's expenses included the interest owed to Farmer's Bank and, without that interest payment, Richard's farm would have been projected to generate income of approximately \$9,500. Field testified that the projected expenses for Richard's farm were reasonable and conservative.

¶ 35 On cross-examination, Field estimated that Richard was farming 140 acres in 2017. Further, he acknowledged that Richard did not provide receipts to support his assertions as to his farming expenses. Although Richard did have his checkbook register, Field did not review it to determine whether it supported the expenses asserted by Richard. Field also testified that he did not know how many acres of farmland Richard owned, how much of the land he farmed belonged to him or was rented, or how much of his farmland was enrolled in CRP.

¶ 36 Richard testified on his own behalf, stating he had been making his spousal maintenance payment of \$4,275 per month since his marriage was dissolved. During the marriage, he worked for GSK selling pharmaceuticals to doctors, hospitals, and pharmacies. At the time of his termination, his base salary was \$108,000 per year and there was an incentive of up to \$21,000 based on certain performance factors. Richard stated that perks of his employment with GSK included a company car, an expense account, a stipend for phone and internet, and travel

expenses.

¶ 37 Richard testified he was on short-term disability with GSK from the date of the parties' dissolution, November 20, 2014, until approximately January 26, 2015. In February 2015, he was informed of layoffs at GSK. Richard stated he received a telephone call from a manager informing him that he had a 45-day window to "reapply for other positions" with GSK. If he did not find another position within that time frame, he would be terminated on May 22, 2015. Richard testified he inquired with at least three individuals about openings within GSK in Illinois, Missouri, and Iowa, including the new acting manager and his former boss; however, no positions were available.

¶ 38 Richard denied that he requested that his employment with GSK be terminated. He also denied that he requested the March 23, 2015, letter from GSK that was addressed "To Whom It May Concern" and stated that his employment with GSK would end on May 22, 2015, due to a "reduction in the size of [GSK's] workforce." Richard further denied that he was terminated from GSK for cause or poor performance. Rather, he testified his position was eliminated and that other employees similarly situated to him were also terminated.

¶ 39 Richard stated he received a severance package in connection with his termination. Pursuant to that package, he received two payments that totaled his after tax salary and anticipated bonus for a 12-month period (\$49,307.82 on July 2, 2015, and \$34,573.07 on January 29, 2016). Richard also received payments from GSK for vacation pay (\$10,742.05 on June 19, 2015) and an additional "retroactive bonus" (\$10,988.61 on September 25, 2015). His severance package also included job counseling services to help him "get reintroduced into the labor market." Richard testified he searched for alternative employment using suggestions he received in

connection with those services but was unsuccessful. Richard testified he applied for unemployment benefits and received approximately \$898 every two weeks. He stated he received unemployment of \$11,076 in 2015 and \$10,455 in 2016. On June 10, 2017, his unemployment benefits expired and he was ineligible for any further benefits.

¶ 40 According to Richard, his only source of income as of the date of the modification hearing was his farm and social security “if [he] would apply for it.” He testified that his farm totaled approximately 650 acres and had been in his family since 1844. Prior to 2014, his farm included an additional 200 acres that Diane was awarded in the divorce. Richard stated he farmed 140 acres, 40 of which were from his own farm and approximately 100 of which were from “the Klene farm.” He stated he rented the Klene farmland for \$10,500 per year.

¶ 41 Richard identified his tax returns dating back to 2011, which included his reports of farm income or loss. In 2011, Richard reported gross farm income of \$88,628; farm expenses totaling \$124,402, including \$38,897 in depreciation expenses; and a net farming loss of \$35,774. In 2012, he reported gross farm income of \$51,886; farm expenses totaling \$97,316, including \$21,869 in depreciation expenses; and a net farming loss of \$45,430. In 2013, Richard reported gross farm income of \$65,343; farm expenses totaling \$94,994, including depreciation expenses of \$20,734; and a net farming loss of \$29,651. In 2014, he reported gross farm income of \$120,266; farm expenses totaling \$99,727, including \$18,273 in depreciation expenses; and a net farming profit of \$20,539. Richard testified, in 2015, he had a farming loss of roughly \$53,000. He noted, however, that he received both his regular and severance pay that year and, for tax reasons, he held some of his 2015 crop back until 2016.

¶ 42 Richard described 2016 as a “break-even year” for his farm. His federal income

tax return for 2016 showed he reported gross farm income of \$117,385; farm expenses totaling \$128,914; and a net farming loss of \$11,529. Richards expenses included the following: \$2,575 for “Custom hire (machine work)”; \$10,014 for depreciation; \$24,882 for fertilizer and lime; \$8,149 for gasoline, fuel, and oil; \$4,238 for insurance; \$9,071 for mortgage interest; \$10,500 for rent; \$28,354 for repairs and maintenance; \$9,677 for seed and plants; \$9,974 for supplies; \$6,237 for taxes; \$1,288 for utilities; \$1,861 for travel; \$603 for meals; \$1,054 for storage; and \$437 for “office.”

¶ 43 Richard testified that approximately 350 acres of his farm were under CRP contracts with the federal government. He recalled having 10 active CRP contracts and stated that, in 2017, he would receive total government payments of \$39,181 for those contracts. Richard’s farm also included the 40 acres in crops that he farmed, approximately 120 acres in pasture, and about 10 acres for homesteads. He stated the remaining acreage was “in brush” and did not generate any income. Richard testified he received \$1,200 in pasture rent from one individual and he allowed another individual to use his pasture without paying rent in exchange for living rent free in a house owned by that individual.

¶ 44 Richard described the house he lived in as an older farmhouse with five rooms and two porches. He had lived there since September 2015 and had an oral arrangement to stay there until he found something better. He did not own a house. Richard submitted a financial affidavit, reporting that he was unemployed with a gross income in 2016 of \$1,986. He further reported total monthly living expenses of \$1,356, monthly health insurance payments of \$110, and maintenance payments of \$4,275. Richard testified his financial affidavit did not “involv[e] the farm” or include his farming income or expenses.

¶ 45 Richard stated that since March or April 2017, he used his son's car for transportation. He acknowledged having two pickup trucks but asserted they were unreliable and that each had in excess of 300,000 miles on them. Further, he testified that, although his monthly social security benefit at full retirement age would be almost \$2,600, that figure was still less than his spousal support obligation and he did not believe that his farming income could make up the difference. Instead, Richard believed he would have to borrow money to pay maintenance. Further, he stated he would be turning 65 the following month and, at the time of the hearing was continuing to look for employment but did not have any prospects. He asked the trial court to eliminate his spousal maintenance obligation altogether.

¶ 46 On cross-examination, Richard testified he had not yet applied for social security benefits but acknowledged that he could have applied in June 2017. He stated he had not yet made up his mind regarding whether to apply and that it “[d]epende[d] on the outcome” of his request to modify maintenance. Richard testified that his farming operation had not increased any since 2015 because he was “considered to be a risk” by potential landlords. He noted that he applied to rent additional ground but had been turned down because landlords did not “like to be called into court to testify” and did not want to get “involved in situations like this.”

¶ 47 Regarding his income from farming, Richard testified that, in 2016, he produced approximately 2,200 bushels of soybeans that were sold in 2017, and resulted in deposits of \$10,251.83 and \$4,833.32 into his bank account. Further, he testified that other than CRP payments from the government, he sometimes received other government payments, depending “upon the program and the year.” Regarding his CRP contracts, Richard acknowledged that two contracts for 1 acre and 8.7 acres of land were set to expire on September 30, 2017. Two other con-

tracts for 92.30 and 77.10 acres of land were set to expire on September 30, 2018.

¶ 48 Richard testified he had not taken any money out of his retirement account because he was “waiting for retirement.” He also asserted there was not much left after Diane was awarded 60% of it in the divorce. Richard agreed that his retirement account had a current value of \$356,356.90.

¶ 49 Richard acknowledged that, in September 2014, he received a final warning from GSK regarding his employment and, in November 2014, he resigned from GSK by mutual agreement; however he asserted that was “reversed by the company.” Richard testified that when he was released from short-term disability in January 2015, he was asked whether he wanted “the RMA or *** to go back to work.” He stated he wanted to return to work and was told to “wait by the phone.” Richard acknowledged that, on May 7, 2015, he sent an email asking GSK for documentation regarding his termination and noting he had not received documentation showing that he was being involuntarily discharged. Richard agreed that he made 11 or 12 inquiries when looking for employment and that 7 of his inquiries were with GSK.

¶ 50 On redirect, Richard testified he paid his maintenance obligation in 2017 with money he borrowed, the sale of some grain, and with income tax refunds. In his financial affidavit, Richard reported receiving tax refunds of \$25,675 from the federal government and \$4,264 from the State of Illinois in 2015, and \$13,590 from the federal government and \$2,039 from the State in 2016. Further he testified he sold approximately \$20,000 worth of soybeans “in the last few months.”

¶ 51 Diane testified she had an IRA account with Morgan Stanley valued at \$521,311.99 as of July 31, 2017, and a Roth IRA account with Morgan Stanley valued at

\$57,947.47 as of July 31, 2017. She acknowledged having a “third account” with Morgan Stanley with a balance of \$112,279.90, from which she had withdrawn \$25,675 “for the year.” Diane testified the withdrawals were to pay real estate taxes, legal fees, and expenses on her rental house.

¶ 52 Diane identified a financial statement she prepared that set forth her 2016 gross income as \$69,178. She reported receiving \$165 per month from substitute teaching, rental income of \$1,915.50 per month, and monthly maintenance payments of \$4,275. Also in 2016, Diane received a federal income tax refund of \$2,655 and a state income tax refund of \$188. Diane testified she owned a rental home and received \$550 per month in rent. She also received rent for 96 acres of the 200 acres of farmland she received in the divorce. Diane stated she received \$115 an acre and she received six payments per year of \$2,731, totaling \$16,386.

¶ 53 Diane reported monthly deductions of \$612 for federal tax, \$212 for state tax, and \$1,176.62 for health insurance premiums. Diane also reported that her monthly living expenses totaled \$5,056.56, and included \$122.51 for telephone, \$115 for cable, \$57.90 for internet, \$600 for groceries and household supplies, and \$905 for rental house repair supplies and farm supplies. Diane testified she drove a 2016 Chevy Equinox and reported a monthly car payment of \$366.78. Diane also asserted she spent \$250 per month visiting family, \$165 per month on vacations, \$200 per month on gifts, \$121 per month in donations, and \$200 per month on clothing.

¶ 54 Diane acknowledged having four checking and savings accounts, and that she had withdrawn approximately \$11,000 from those accounts in 2017. She further acknowledged that, in December 2014, she wrote three \$10,000 checks, which she gave to her mother and two sisters. However, she testified that her family was worried about her safety after the divorce and

“wanted to be sure that [Diane] would have some money somewhere that [she] could access.” Diane testified her family members held the checks for about one month and then returned them back to her. Further she stated that she last received a maintenance payment from Richard in July 2017. She received nothing for maintenance in August 2017. Diane identified Richard’s sources of income from October 1, 2014, to May 1, 2017, as his employment with GSK, CRP payments, rental payments, farming income, tax refunds, and unemployment benefits.

¶ 55 At the conclusion of the hearing, the trial court took the matter under advisement. On September 6, 2017, it entered a written order denying Richard’s petition to modify. It determined Richard failed to meet his burden of proving that that his termination was involuntary, stating that evidence presented by the parties as to that issue “was conflicting and at best equally balanced.” The court also determined that, assuming Richard’s termination was involuntary, his ability to pay the maintenance award had not changed. The court made the following findings:

“that [Richard] has remained current with his maintenance payments to [Diane] through July 2017; that [Richard] received substantial marital assets in the Judgment for Dissolution of Marriage herein, sufficient to support his needs as well as paying the monthly maintenance award to [Diane]; that the trial court contemplated the possibility of [Richard] retiring due to his age, or no longer being employed by GSK, by providing for a lien on certain parcels of marital real estate awarded to [Richard] to secure future payments of maintenance to [Diane].”

¶ 56 This appeal followed.

¶ 57

II. ANALYSIS

¶ 58

A. Petition to Modify Maintenance

¶ 59 On appeal, Richard challenges the trial court’s denial of his petition to modify maintenance. He argues the court erred in failing to find a substantial change in circumstances based on the loss of his job. Richard maintains his job loss was neither voluntary nor the result of bad faith. He also contends that, because the maintenance award was based on the parties’ incomes, it must be modified where he established a dramatic decrease in his income. Further, Richard argues the court failed to consider all relevant statutory factors.

¶ 60 Section 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a-5) (West 2014)) provides that “[a]n order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances.” “A ‘substantial change in circumstances’ *** means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed.” *Shen v. Shen*, 2015 IL App (1st) 130733, ¶ 132, 35 N.E.3d 1178. “The party seeking modification bears the burden of establishing a substantial change of circumstances.” *Id.*

¶ 61 Further, the Act sets forth various factors for a court to consider in the context of a proceeding to modify or terminate maintenance. 750 ILCS 5/510(a-5) (West 2014). Those factors include considerations relevant to a determination of maintenance in the first instance under section 504(a) of the Act (750 ILCS 5/504(a) (West 2014)), including:

“(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;

(2) the needs of each party;

(3) the realistic 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) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;

(6) 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 any parental responsibility arrangements and its effect on the party seeking employment;

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

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

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

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

(13) any valid agreement of the parties; and

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

¶ 62 A court should also consider the following section 510(a-5) factors in the context of a petition to modify maintenance:

“(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 2014).

¶ 63 A trial court’s decision regarding whether to modify an award of maintenance will not be overturned absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24, 89 N.E.3d 296. “An 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.” (Internal quotations omitted.) *Id.* Additionally, “it is well established that the credibility of the witnesses and weight to be given to their testimony is for the trier of fact to decide, and a reviewing court may not substitute its judgment for that of the fact finder.” *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199, 951 N.E.2d 524, 532 (2011). On review, we may affirm the trial court’s judgment on any basis supported by the record. *Heroy*, 2017 IL 120205, ¶ 24.

¶ 64 Here, the burden was on Richard as the moving party to establish that a substantial change in circumstance had occurred, *i.e.*, that Diane’s financial needs had decreased or that he no longer had the ability to pay the spousal support award. Richard maintains he met his burden by establishing that he lost his job and, as a result, his primary source of income.

¶ 65 However, we note that in reaching its decision to deny modification, the trial court stated that, at the time of the dissolution judgment, it “contemplated the possibility of [Richard] retiring due to his age, or no longer being employed by GSK, by providing for a lien on certain parcels of marital real estate awarded to [Richard] to secure future payments of maintenance to [Diane].” “It is axiomatic that, to warrant termination [of maintenance], the

‘change’ must not have been contemplated when permanent maintenance was ordered.” *In re Marriage of Bernay*, 2017 IL App (2d) 160583, ¶ 18, 87 N.E.3d 1 (finding husband’s plan to retire was not a substantial change because “retirement was clearly contemplated when permanent maintenance was ordered”); *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1005, 883 N.E.2d 535, 541-42 (2008) (stating “we are reluctant to find a ‘substantial change in circumstances’ where the trial court contemplated and expected the financial change at issue.”). Thus, because the potential loss of Richard’s income from GSK was taken into consideration by the trial court when the dissolution judgment was entered, the loss of such income does not represent a substantial change in circumstances.

¶ 66 Richard suggests the loss of his GSK income could not have been contemplated by the trial court when originally awarding maintenance because such circumstances were not mentioned in the written dissolution judgment. Initially, we disagree that we are precluded from finding that a fact was considered or contemplated by the trial court simply because it was not explicitly set forth in the court’s written order. Moreover, in this case, the same trial judge who presided over Richard’s petition to modify entered the dissolution judgment. Thus, the judge was aware of the factors and considerations that went into fashioning its permanent maintenance award. Also, the record supports the court’s finding that the loss of Richard’s GSK income was contemplated, in that it reflects that both parties were in their 60s at the time of the dissolution judgment and close to retirement age. Specifically, the judgment noted that Diane was 61 years of age and Richard was 62 years of age. Ultimately, we cannot conclude that the court did not consider or contemplate the possibility of Richard’s separation from his employment with GSK and the resulting loss of his GSK income when it awarded Diane permanent maintenance.

¶ 67 As stated, Richard also argues the trial court erred by failing to consider certain factors pertaining to the parties' financial circumstances, including Diane's retirement benefits (750 ILCS 5/510(a-5)(6) (West 2014)), the decrease in Richard's income (750 ILCS 5/510(a-5)(7) (West 2014)), the property owned by each party (750 ILCS 5/504(a)(1), 510(a-5)(8) (West 2014)), and the parties' "sources of public and private income including, *** retirement income" (750 ILCS 5/504(a)(10) (West 2014)). We note, however, that although the trial court must consider all relevant statutory factors in reaching its decision, it is not required to make explicit findings as to those factors. *In re Marriage of Viridi*, 2014 IL App (3d) 130561, ¶ 28, 13 N.E.3d 333. In this instance, substantial evidence was presented to the trial court regarding the parties' financial circumstances. There is nothing in the record which indicates that the court ignored the evidence presented to it or that it failed to consider any relevant factors.

¶ 68 Ultimately, the record reflects Diane's financial circumstances remained essentially the same following the parties' divorce. Although Richard no longer received an income from GSK, the trial court noted that he had "received substantial marital assets" in the parties' divorce, which were "sufficient to support his needs as well as paying the monthly maintenance award." Again, the record supports this finding, showing that in the divorce Richard received 652 acres of farmland valued at \$2,748,000 as well as farm equipment valued at \$231,322. Evidence also showed Richard's farmland was an income-producing asset. In particular, he earned income from his farming operations, which the evidence indicated could be expanded; CRP payments; and rental payments.

¶ 69 Here, the trial court's decision was not arbitrary, fanciful, or unreasonable. Thus, its denial of Richard's petition to modify maintenance was not an abuse of discretion.

¶ 70

B. Request to Admit

¶ 71 On appeal, Richard also argues the trial court erred by denying a motion he filed challenging Diane’s responses to a request to admit he serve upon her. He contends Diane’s responses were improper and, as a result, he was forced to take Massey’s evidence deposition at “great expense.” Richard maintains that the costs and fees associated with Massey’s deposition should be assessed to Diane.

¶ 72 Illinois Supreme Court Rule 216 (eff. July 1, 2014) provides that a party may serve a request for the admission “of the truth of any specified relevant fact” or “the genuineness of any relevant documents” on the opposing party. Further, subsection (c) of that Rule states as follows:

“Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters 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 on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.” Ill. S. Ct. R. 216(c) (eff. July 1, 2014).

“[T]he purpose of [a Rule 216] request is to establish some of the material facts in a case without the necessity of formal proof at trial.” *Fraser v. Jackson*, 2014 IL App (2d) 130283, ¶ 44, 12 N.E.3d 62. “This enables the parties and the court to limit the issues and it results in substantial

savings of time and expense, for both the parties and the court.” *Id.*

¶ 73 Further, a request for admission is part of the discovery process. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 347, 875 N.E.2d 1065, 1075 (2007) (“[R]equests for admission constitute discovery.”). “A trial court is afforded great latitude in ruling on discovery matters, and a reviewing court will not disturb such a ruling on appeal absent a manifest abuse of discretion.” *Corona v. Malm*, 315 Ill. App. 3d 692, 699, 735 N.E.2d 138, 143 (2000).

¶ 74 Here, on March 30, 2017, Richard served Diane with a request to admit facts and the genuineness of certain documents. On appeal, he specifically notes that he asked Diane to admit the genuineness of the March 23, 2015, “To Whom It May Concern” letter; Richard’s GSK termination package; correspondence from GSK’s legal counsel; and a short-term disability benefits statement dated January 19, 2015 (Request Nos. 1, 7, 18, 19, and 28). Richard also points out that he asked Diane to admit that she had no evidence contradicting, disputing, or which was inconsistent or contrary to the contents of those documents (Request Nos. 6, 11, and 20).

¶ 75 On April 20, 2017, Diane responded to Richard’s request to admit. She provided substantially the same answer to requests to admit the genuineness of the March 23, 2015 letter; certain correspondence from GSK’s legal counsel; and short-term disability benefits statement. Specifically, she replied: “Admitted. By such admission, [Diane] does not stipulate to the admission of said documents in trial, reserving all objections she may have as to foundation, hearsay or any other legitimate objections. Further, by said admissions, [Diane] does not admit that the documents provided are the complete and full documents of relevant material.” Diane answered that she lacked “sufficient information to either admit or deny” the genuineness of the termination

package. Finally, she denied requests to admit that she had no evidence to contradict or dispute, or which was inconsistent or contrary to, the various GSK-related documents at issue.

¶ 76 On May 1, 2017, Richard filed a motion challenging Diane’s responses with the trial court, arguing they were inconsistent and contained meaningless admissions. He asked the court to authorize the admission of certain facts and all documents referenced in the request to admit. Additionally, he sought attorney fees incurred due to Diane’s failure to appropriately respond to his request to admit.

¶ 77 On May 17, 2017, the trial court conducted a hearing and addressed Richard’s challenge to Diane’s responses. On questioning by the court, Diane’s counsel clarified that Diane admitted that the GSK documents at issue were genuine, but that she continued to contest the truth of what was contained within those documents relative to Richard’s termination. Counsel further maintained that Diane had also received documents reflecting that Richard’s employment was terminated at one point in time by his own request. On May 26, 2017, the court entered a written order, denying Richard’s challenge to Diane’s responses and stating as follows:

“All the responses made by [Diane] to the Request to Admit submitted by [Richard] are within the scope of permitted responses under [Rule] 216; that the question of whether or not [Richard] was involuntarily terminated from his employment herein would be a legal conclusion which is not a matter that can be resolved by a Request to Admit ***.”

¶ 78 On appeal, Richard asserts that this case is similar to the facts presented in *Jordan v. Bangloria*, 2011 IL App (1st) 103506, ¶ 27, 966 N.E.2d 986, where Supreme Court Rule 137 (eff. Feb. 1, 1994) sanctions were imposed due to improper responses to a request to admit. In

Jordan, the responding party objected to the request to admit on the basis that it was improper and that it violated supreme court rules. *Id.* ¶ 22. However, the trial court determined the response constituted a “ ‘blanket declination to respond substantively to the Request to Admit’ ” and that the responding party’s objections were “ ‘without merit, and baseless, and unsupported by any case law.’ ” *Id.* ¶ 23.

¶ 79 Here, rather than objecting to the request to admit and declining to respond, Diane, in fact, provided responses to the requests posed by Richard. Further, the record reflects that Diane contested the basis of Richard’s termination from GSK and whether it was involuntary as asserted by Richard. Moreover, she clarified that her responses to the request to admit constituted admissions that the documents at issue were generated by GSK and received by her during the discovery process, but that she continued to challenge the truth of the matters contained within those documents. Diane also asserted that she had documentation which supported her position in the case regarding Richard’s termination. We note that evidence presented at the modification hearing supported that assertion.

¶ 80 Based on the circumstances, we find *Jordan* is factually distinguishable from the present case. Further, we find no error in the trial court’s determination that Diane’s responses were “within the scope of permitted responses” under Rule 216. Thus, the court committed no error in denying Richard’s challenge to Diane’s responses.

¶ 81 III. CONCLUSION

¶ 82 For the reasons stated, we affirm the trial court’s judgment.

¶ 83 Affirmed.