

¶ 4 Petitioner and respondent were married on June 22, 1991. They separated in 2013, and the court entered a judgment of dissolution of marriage on October 9, 2014. Pursuant to a marital settlement agreement (Agreement) filed the same day, respondent would receive maintenance in the amount of \$7500 per month. The Agreement stated,

“The amount of maintenance only is further subject to review upon the occurrence of the following events (a) termination by a child of her college studies prior to completion, (b) employment of [respondent], or (c) [respondent] receiving Social Security Disability Benefits, in which case, the amount of maintenance paid by [petitioner] shall be reduced by an amount equal to one-half (1/2) of the disability benefits paid to [respondent]. Also, the amount of maintenance shall be subject to review based upon the normal and customary statutory and case law factors ***.”

Respondent had the “affirmative obligation” to apply for social security disability benefits. If denied, the Agreement stated “she shall seek appropriate employment consistent with her medical condition.” The Agreement further provided,

“[A]ny income received by [petitioner] from his employment over and above his basic salary shall be used to pay the ‘net’ college educational expenses of the children. ***

*** Any such income received by [petitioner] in excess of the amount of money necessary to pay each year the aforesaid expenses shall be placed in a bank account and is subject to review or division ***.

*** Any such money and/or bonuses received by [petitioner] in an amount less than necessary to pay for the aforesaid expenses each year

shall be paid as follows one half (1/2) or fifty (50%) percent by [petitioner] and one-half (1/2) or fifty (50%) percent by [respondent].”

¶ 5 On May 1, 2017, petitioner filed a petition to reduce maintenance, alleging that his circumstances had been substantially altered in three ways. First, the petition alleged that Pepsi had terminated petitioner’s employment. Petitioner’s new employment with The Little Potato Company provided a “salary and bonus structure *** substantially less than his prior employment.” Second, the petition alleged that respondent had “failed to comply with the terms of the judgment by failing to seek employment.” Third, petitioner noted that new maintenance guidelines had come into effect. Petitioner stated that each of these constituted a substantial change in circumstances. On March 7, 2018, respondent filed a motion for summary judgment, alleging (1) maintenance was set premised on petitioner’s base salary at Pepsi of \$185,000, which had remained the same, (2) petitioner had provided no evidence of a reduction of his overall income, (3) respondent had provided documentation of failed attempts to receive social security and a doctor’s letter indicating her inability to work due to medical conditions, and (4) the maintenance statute itself could not be the premise of a change in circumstances. Petitioner responded to the motion for summary judgment, stating, *inter alia*,

“[Petitioner] only agreed to pay \$7,500 in maintenance due to his total compensation package in which he was paid almost \$529,000 in 2014, plus stocks, options, pension and other benefits. If his total income was his salary of \$185,000 alone, he never would have agreed to such a high amount of maintenance as he could not survive while maintaining all of his own and the children’s college expenses. [Petitioner’s] income has reduced each year since entry of Judgment. His tax return shows he earned

\$529,000 in 2014, \$314,000 in 2015 and \$287,000 in 2016. In 2017, he was terminated from Pepsi and only earns \$185,000[0] base salary presently, earning only \$160,000 from his employment at Little Potato Company last year.”

¶ 6 The court held a hearing on the motion for summary judgment. The parties solely presented argument. The court stated that it needed to find a substantial change before considering the statutory factors. The court granted the motion for summary judgment in favor of respondent, stating:

“I am finding that there is no substantial change. The base income is what was used for maintenance. The statute did change. I acknowledge that. That is not a basis to change maintenance.

The fact that [respondent] did not seek a job or social security I think is a totally different issue, but for the modification, there is no substantial change.”

The court’s written order stated:

“[T]he court finds that maintenance was previously set based on Petitioner’s base salary of \$185,000 and that said base salary has not changed. The Court finds there is no substantial change in circumstances since the entry of judgment there is no issue of material fact and that the Court declines to consider maintenance factors under Sections 504 and 510.”

¶ 7

II. ANALYSIS

¶ 8 On appeal, petitioner argues the circuit court (1) failed to consider the appropriate factors when granting the summary judgment motion, and (2) erred in granting the motion for summary judgment where petitioner raised a genuine issue of material fact. We find that the court should have considered the factors under sections 504 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504, 510 (West Supp. 2017)) when determining whether petitioner raises a genuine issue of material fact that there had been a substantial change in his circumstances. When considering the factors, we find that a genuine issue of material fact exists so as to overcome summary judgment.

¶ 9 “A defendant may, at any time, move with or without supporting affidavits for a summary judgment in his or her favor as to all or any part of the relief sought against him or her.” 735 ILCS 5/2-1005(b) (West 2016). “The judgment sought shall be rendered without delay if 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.” *Id.* § 2-1005(c). “Where the material facts are disputed or where reasonable people could draw different inferences from the facts, summary judgment is inappropriate.” *In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 43. “While summary judgment can aid in the expeditious disposition of a lawsuit, it is a drastic measure that should only be permitted where the movant’s right is clear and free from doubt.” *Hastings v. Jefco Equipment Co., Inc.*, 2013 IL App (1st) 121568, ¶ 4. We “review[] the grant of summary judgment *de novo*” and “construe[] all evidence strictly against the movant and liberally in favor of the nonmoving party.” *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008).

¶ 10 Here, petitioner filed a petition to reduce maintenance. According to section 510(a-5) of the Act, “an order for maintenance may be modified or terminated only upon a showing of a

substantial change in circumstances.” 750 ILCS 5/510(a-5) (West Supp. 2017). When respondent filed the motion for summary judgment, it alleged that there was no genuine issue of material fact. Thus, the court had to determine whether a genuine issue of material fact existed regarding petitioner’s allegation that he had a substantial change in circumstances. In making such a determination, section 510(a-5) further provides, “In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court *shall* consider the applicable factors set forth in subsection (a) of Section 504 and the following factors: ***.” (Emphasis added.) *Id.* “Generally, ‘shall’ indicates a mandatory intent ***, and the legislature’s use of the word ‘shall’ in a statutory provision is regarded as evidence that the legislature intended the provision to be mandatory.” *Read v. Sheahan*, 359 Ill. App. 3d 89, 93 (2005). Therefore, the Act required the circuit court to consider the applicable factors to determine whether a genuine issue existed regarding a potential substantial change in circumstances.

¶ 11 In coming to this conclusion, we note that respondent states:

“[T]he question becomes: (1) is the trial court to follow the same procedures, based on [section] 510 and [section] 504 of [the Act], that it would use in a full hearing on the merits of a motion to modify maintenance, or, (2) should the trial court follow the requirements of 735 ILCS 5/2-1005? *** The hearing on the merits of a modification of maintenance petition is based on evidence, while the hearing on a motion for summary judgment is based on the record of the case up to the point of the hearing.”

It is not a question of which one controls, as respondent states. Instead, the court must use sections 504 and 510 of the Act in conjunction with the procedure normally used for summary

judgment motions under the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2016)). When a petitioner brings a petition to reduce maintenance, the question is whether there was a substantial change in circumstances. If a respondent files a motion for summary judgment, such respondent is arguing that there is no genuine issue of material fact as to the issue of whether there was a substantial change in circumstances. The court must use the factors necessary to determine a substantial change in circumstances (750 ILCS 5/504, 510 (West Supp. 2017)) to determine whether “the pleadings, depositions, and admissions on file, together with the affidavits, if any” (735 ILCS 5/2-1005(c) (West 2016)) that are considered in summary judgment provide a genuine issue of material fact. A full hearing under the Act based on evidence is only held if the summary judgment motion fails.

¶ 12 Having established that the court must use the factors enumerated in sections 504 and 510 to determine whether a genuine issue of fact exists as to a substantial change in circumstances, we will use those factors to determine whether the circuit court erred in granting summary judgment.

¶ 13 As stated above (*supra* ¶ 10), when determining whether a substantial change in circumstances occurred, the court must use the applicable factors from sections 504(a) and 510(a-5). The factors in section 504(a) are:

“(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 source 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 that parties; and

(14) any other factors that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a) (West Supp. 2017).

The factors in section 510(a-5) are:

“(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.” *Id.* § 510(a-5).

¶ 14 Here, petitioner’s petition to reduce maintenance was based on three allegations of a substantial change in circumstances: (1) his employment with Pepsi was terminated, and his new employment did not include the same substantial bonus structure or other incentives, (2) respondent had failed to seek employment as required under the Agreement, and (3) new maintenance guidelines had come into effect. We agree with the court that the change in the maintenance guidelines does not constitute a substantial change in circumstances. *Id.* § 510(a) (“The enactment of Public Act 99-764 itself does not constitute a substantial change in circumstances warranting a modification.”). We again note that summary judgment is proper where “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). As neither party filed any depositions, admissions, or affidavits with their petition or motions in the circuit court, we consider the motion solely based on the pleadings.

¶ 15 Looking at the factors enumerated in sections 504(a) and 510(a-5) of the Act, we find that a genuine issue of material fact existed as to a substantial change in circumstances. Petitioner’s termination from Pepsi and new employment at The Little Potato Company amounted to a good faith change in employment status. Though respondent places much weight on the fact that petitioner’s base salary remains the same, the factors in sections 504(a) and 510(a-5) do not

mention “salary,” but instead focus on income as a whole. Maintenance was originally set by the Agreement. The trial court’s finding that petitioner considered only his base salary when agreeing to the figure is based upon respondent’s argument. Petitioner denies the same. Likewise, the court’s finding on summary judgment that an alleged decrease in income from over \$500,000 per year to less than \$200,000 is not a “substantial change” is perplexing. While petitioner’s base salary at Pepsi and current salary at The Little Potato Company may be the same \$185,000, petitioner made significantly more at Pepsi. He earned “\$529,000 in 2014, plus stocks, options, pension and other benefits.” Moreover, his income was \$314,000 in 2015, and \$287,000 in 2016. Each of these amounts is substantially more than the \$185,000 he makes at The Little Potato Company. We find a genuine issue of material fact exists as to a potential decrease in petitioner’s income and earning capacity. Moreover, the Agreement provided that respondent had the “affirmative obligation” to apply for social security disability benefits. If denied, the Agreement stated “she shall seek appropriate employment consistent with her medical condition.” While respondent argues that she was denied social security disability and her doctor wrote a note saying she was unable to work, we find that a genuine issue of material fact exists regarding the reasonableness of respondent’s efforts to become self-supporting. The physician’s letter was an opinion. Therefore, we reverse the court’s granting of summary judgment and remand for further proceedings.

¶ 16

III. CONCLUSION

¶ 17

For the foregoing reasons, we reverse the judgment of the circuit court of Will County and remand for further proceedings.

¶ 18

Reversed and remanded for further proceedings.