Illinois Official Reports

Appellate Court

In re Marriage of Bostrom, 2022 IL App (1st) 200967

Appellate Court Caption	*In re* MARRIAGE OF DEAN BOSTROM, Petitioner-Appellee, and SANDRA BOSTROM, Respondent-Appellant.
District & No.	First District, Fifth Division No. 1-20-0967
Filed Rehearing denied	August 26, 2022 October 13, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 2010-D3-30873; the Hon. Thomas J. Kelley, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Michael G. DiDomenico and Sean M. Hamann, of Lake Toback DiDomenico, of Chicago, for appellant. Annette M. Fernholz, of Law Offices of Annette M. Fernholz, P.C., of Chicago, for appellee.
Panel	JUSTICE CUNNINGHAM delivered the judgment of the court, with opinion. Justice Delort concurred in the judgment and opinion. Justice Connors concurred in part and dissented in part, with opinion.

OPINION

¶ 1 This appeal arises from the circuit court of Cook County's order resolving a petition filed by petitioner-appellee, Dean Bostrom, seeking to terminate his maintenance payments and life insurance obligations to respondent-appellant, Sandra Bostrom, his former wife. The circuit court denied Dean's request to terminate his maintenance obligation to his former wife, Sandra.[1] Instead, the court reduced his maintenance obligation to $0 per month based on what the court determined to be a substantial change in circumstances. Sandra contends on appeal that the circuit court erred when it modified Dean's maintenance obligation to her because the increase in her income was not a substantial change in circumstances. Sandra also argues that even if the increase in her income constituted a substantial change in circumstances, the circuit court abused its discretion by modifying Dean's monthly maintenance payment to $0. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 2 I. BACKGROUND

¶ 3 Sandra and Dean were married on July 20, 1985, and had four children, who are now emancipated. The parties' judgment for dissolution of marriage was entered on December 28, 2011. At the time of the divorce, the parties had one minor child, two college-age children, and a 23-year-old, who was not in college. The divorce judgment incorporated the parties' agreement, which was memorialized in a marital settlement agreement (MSA), which was signed by the parties and entered as part of the court's order at the time of the dissolution of marriage.

¶ 4 Article V of the MSA addressed the maintenance agreement between the parties and provided that beginning September 1, 2012, Dean would pay Sandra $1750 per month as and for "permanent maintenance." That section of the MSA also included a provision which provided that Dean's maintenance payments would terminate in accordance with the statutory factors set forth in section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(c) (West 2012)). Those factors included the death of either party, Sandra's remarriage, or Sandra's cohabitation with a person or residing with a person on a continual, conjugal basis.

¶ 5 In article VI, the section regarding Dean's life insurance obligation, the MSA stated, in relevant part:

> "The Husband shall maintain a life insurance policy on his life with death benefits in the amount of $200,000, naming the Wife as the irrevocable beneficiary, at his sole expense, until his retirement or maintenance terminates. On or before January 30th of each year, the Husband shall provide the Wife with proof that the policy is in full force and effect and that she is named the sole beneficiary. Upon the effective date of the Husband's retirement, if the Wife desires to maintain the policy in effect, the Wife shall be solely responsible for the payment of the monthly premium. The Husband shall cooperate fully in executing any and all documents necessary to obtaining, maintaining and ensuring payment for said policy and the beneficiary designation. Husband shall maintain said policy at his expense until retirement. Wife shall be allowed to obtain an

[1]For clarity, since Dean Bostrom has remarried, we will refer to the parties, as well as Dean's second wife, by their first names.

additional policy on Husband's life at her cost, and Husband shall cooperate fully in obtaining said policy."

¶ 6 In article VII of the MSA, the section entitled "Marital Property," the following was outlined:

> "During the Marriage, the parties acquired certain marital property, including but not limited to real estate, retirement and other accounts ***. Each of the parties agrees that distribution of said marital property is completely resolved in Articles VIII—XII of this Agreement and hereby waives any all [*sic*] claims against the other for said property."

In article XI of the MSA, the section entitled "Retirement Accounts," the MSA provided, among other things, that Dean had interests in an Illinois Municipal Retirement Fund (IMRF) pension and a Nationwide Retirement Solutions Deferred Compensation 457 Plan (457 plan). It also outlined that Sandra had interests in a Northwestern Mutual individual retirement account (IRA) and a Teachers' Retirement System account. In section 11.3 of article XI, it stated that a Qualified Illinois Domestic Relations Order (QILDRO) shall be entered on the parties' retirement accounts and on Dean's IMRF pension, dividing the marital portion of the pension and retirement accounts equally between the parties.

¶ 7 The remaining articles of the MSA described the disposition of the marital residence, resolution of financial obligations accrued during the marriage, treatment of tax returns, and attorney fees and other general provisions attendant to dissolving the marriage.

¶ 8 On January 24, 2018, Dean filed a petition in the circuit court of Cook County to terminate maintenance payments and life insurance obligations to Sandra pursuant to section 510 of the Act (750 ILCS 5/510 (West 2018)). At the time of the filing of the petition to terminate maintenance payments and life insurance obligations, the parties' children were all emancipated. In Dean's petition, he alleged that, at the time of the judgment for the dissolution of the marriage, he was gainfully employed and earning "substantial sums of money." The petition stated that Dean reached retirement age and was retiring on April 27, 2018, at which time he would earn substantially less money than he had earned when his marriage to Sandra was dissolved. Dean asserted that he would not be able to financially continue his maintenance payment obligation to Sandra. Dean alleged that his retirement constituted a substantial change in circumstances because his "earnings will be significantly reduced thereby lessening the amount he will have available to meet his [own] monthly expenses." He further stated that upon his retirement, on May 1, 2018, he and Sandra would both be eligible to receive pension payments from his pension under the terms of the QILDRO and that the amount of pension payments that Sandra would receive would more than double the current monthly maintenance payments he was then paying. Dean requested that the court terminate his maintenance payment obligation effective on the date of his retirement. As for his life insurance obligation to Sandra, he cited the provision in the MSA that provided that he would maintain a life insurance policy on his life "until his retirement or maintenance terminates"; therefore, he requested termination of that obligation as well.

¶ 9 Sandra has not remarried. After the sale of the marital residence and the division of the proceeds in accordance with the MSA, Sandra purchased a home in Streamwood, Illinois. Dean married Tracy, his second wife, on July 12, 2013. They have no children together. Dean and Tracy purchased a home in Elkhorn, Wisconsin. Tracy inherited approximately $750,000 from her father. She deposited about $550,000 into a joint Merrill Lynch account with Dean, who

deposited roughly $100,000 into the account. At the time of Dean's petition, the Merrill Lynch account was valued at approximately $476,667. Sandra's income from her job as a school district librarian, instead of being a teacher as she was at the time of the divorce, had increased from $65,000 to slightly over $100,000 annually. The increase was determined to be 53%.

¶ 10 On July 17, 2018, Sandra filed a petition for rule to show cause against Dean. In her petition, she alleged that Dean had stopped paying maintenance to her when he retired on April 27, 2018, and that he was in arrears in the amount of $5519.10, in violation of the judgment for dissolution of marriage. In response to Sandra's petition, Dean admitted that he had stopped making maintenance payments to Sandra but stated that he was not in arrears because Sandra had the ability to receive her portion of his IMRF pension payments, but she had refused to file the required documents to begin receiving those payments.

¶ 11 On February 6, 2019, the trial court entered an agreed QILDRO calculation order, which provided that Sandra would receive 50% of Dean's IMRF pension, which yielded $4209.50 per month.

¶ 12 In December 2019, the circuit court of Cook County conducted an extensive hearing on Dean's petition to terminate maintenance payments and Sandra's petition for rule to show cause. Dean's counsel contended in opening statements that retirement can trigger a shift in income between the parties and that Sandra's income "vastly outweighs what it was at the time of the divorce." The thrust of Dean's argument was that Dean was financially unable to continue paying Sandra and, further, Sandra no longer needed the maintenance payments that had been ordered at the time of the divorce. Dean pointed out that, at the time of the divorce, Sandra earned $65,000 annually and, at the time of the maintenance payment modification hearing, she was earning approximately $151,000 annually, which included payments from Dean's pension plan. Sandra's counsel asserted in opening statements that the evidence would show that Dean's retirement and Sandra's current income were contemplated at the time the parties entered into the MSA, which was later incorporated into the judgment for the dissolution of the marriage. Dean, Sandra, and Tracy, who was Dean's current spouse, testified at the three-day hearing.

¶ 13 Dean, who was 63-years old at the time of the hearing, testified as follows.[2] He lives in Elkhorn, Wisconsin, in a home that he owns with his wife, Tracy, whom he married on July 12, 2013. The purchase price for the home was $575,000. When asked whether he made a down payment when he purchased the home, he responded, "Yes. We did," and that he believed the down payment was about $152,000. Tracy inherited $750,000 from her father in May 2013. Dean and Tracy used part of Tracy's $750,000 inheritance for the down payment. Dean testified that he probably also used approximately $97,000 of the money he received when the marital home, which he owned with Sandra, was sold in 2012. He testified that "[i]t was mixed money at that point." His current home with Tracy has four bedrooms, four bathrooms, and his mortgage payment was $2730 per month.

¶ 14 Dean also testified that he did not use money from the Merrill Lynch account without Tracy's approval because it was "her father's inheritance," even though the Merrill Lynch account had his name on it as well. Dean and Tracy "discuss[ed] things" related to the use of the Merrill Lynch account, and Tracy had "an extreme objection" to making maintenance payments to Sandra by using her inheritance money.

[2]Dean's date of birth is July 10, 1956; thus, he was 55 years old at the time of the divorce.

¶ 15 Dean further testified that at the time of his divorce from Sandra, other than the marital home, he had $160,000 in a 457 plan that he and Sandra split equally. When asked what else he had at the time of the divorce, he responded "probably not a whole lot of anything else." Dean had an IMRF pension from his 35 or 36 years of employment in three different park districts in Illinois. Under Dean's IMRF pension, the earliest age at which he could have retired was 55, and he retired on April 27, 2018, when he was 61 years and 9 months old. He said that he decided to retire due to the stress and pressure of his job. In May 2018, he started receiving his IMRF pension payments in the amount of $5900 monthly, and Sandra received about $4250 monthly from that pension fund as well. Dean was eligible to receive Social Security benefits at the time of the maintenance modification hearing, but he was deferring that until he was 70 years old to apply for those payments. He acknowledged that he stopped making the $1750 monthly maintenance payments to Sandra in May 2018 after he retired. When questioned about whether he had contemplated retirement in December 2011 at the time of the divorce, he responded, "No, not any dates or anything," and "I just knew it was out in the distance. I had no time frame, no date. No, I had no idea when I was going to retire at that point."

¶ 16 Dean testified that the money that Tracy inherited from her father in 2013 was deposited into the Merrill Lynch account and he "was listed on that account." When asked whether he was originally listed on that account, Dean testified that Tracy's inheritance was originally in Barrington Bank. He and Tracy opened the Merrill Lynch account and placed whatever money they had individually, as well as her inheritance, into the Merrill Lynch account. Dean and Tracy then used the money in the Merrill Lynch account to purchase a variety of household and recreational items, as well as a timeshare in Orlando, Florida. Dean also paid a hospital bill with money from the Merrill Lynch account. After the purchases and expenditures, the balance of the Merrill Lynch account, at the time of the hearing, was about $470,000.

¶ 17 Dean testified that he and Tracy had a checking account with Chase Bank (Chase), and the money deposited into that account included his $5900 IMRF monthly pension payment, Tracy's $1300 IMRF monthly pension payment, and Tracy's paycheck from her current job, where she earned $12 per hour. Dean paid bills with the money from the Chase checking account. When they needed additional money, they transferred funds from the Merrill Lynch account to the Chase checking account. He testified that "our living expenses exceed our income right now," such that they had about a $5000 to $7000 shortfall each month. They supplemented the shortfall with funds from the Merrill Lynch account. The financial statement which Dean submitted in advance of the court hearing corroborated his testimony. Dean testified that he currently owed $19,000 on his Chase credit card and always paid his credit card balances in full each month using money from the Chase checking account or the Merrill Lynch account. Dean said that he did not initially disclose the Merrill Lynch account on the financial affidavits that he prepared for the court hearing because he did not consider it "his money." He testified that he believed it was "Tracy's inheritance, her money." Dean also testified that "[a]ll of our accounts are joint accounts" and acknowledged the Merrill Lynch account was jointly titled with Tracy. When asked whether he believed he could continue paying maintenance to Sandra, he responded that "[i]t would be difficult" and he would "have to further withdraw from Tracy's inheritance."

¶ 18 Dean testified that during his marriage to Sandra, they paid for her to obtain a master's degree in teaching using marital funds. Dean and Sandra routinely took vacations during their marriage. The year before the divorce, Dean and Sandra spent about $3000 or $4000 on

vacations. Dean testified that the largest expenditure during their marriage was Sandra's gambling debts.

¶ 19 On cross-examination, Dean testified that under the MSA, his life insurance obligation to Sandra terminated upon his retirement or when his maintenance obligation terminated. Dean acknowledged that those were "two separate contemplated terms." He testified that at the time he agreed to pay Sandra maintenance of $1750 each month, he knew how the retirement accounts would be divided under the MSA and that Sandra would receive a portion of his pension.

¶ 20 In 2011, Dean's income was $143,876 and, in 2018, his income was $187,000. Between August 25, 2018, and October 24, 2019, he deposited $236,459.34 into the Chase checking account that he shared with Tracy. During that period, he spent $231,861.53, which was approximately $17,500 per month.

¶ 21 Sandra, who was 59 years old,[3] at the time of the hearing, testified that she lives in a townhome in Streamwood, Illinois. She purchased the home in 2014 for $220,000. She made a $75,000 down payment using money from a $128,000 inheritance that she received in 2013. Sandra had received $115,000 as her portion of the sale of the marital home. She used that money to pay attorney fees, living expenses, and her children's college expenses. Sandra testified that during the marriage, she took care of the children's medical and educational needs. She also cooked and cleaned for the family and entertained Dean's guests.

¶ 22 Sandra testified that in 2003, she started working for Schaumburg School District 54 (District 54) as a fifth-grade teacher. She received her master's degree in 2003, which was paid for by her and Dean's joint checking account as well as student loans in the amount of $16,000, which she had paid off by the time of the hearing to modify maintenance. At the time of the divorce, according to Sandra's testimony, her income was about $60,000, and she claimed her income was about $93,000 or $94,000 in 2018. She still worked for District 54 but as a librarian, not a teacher. She testified that stress had caused her to have a nervous breakdown. Her school district gave her the librarian job after that. She also received salary increases. Sandra testified that her salary was based on her years of service and her level of education. More years of service and more education resulted in an increase in pay. She was also receiving $4209 each month from Dean's pension fund and estimated her gross income for 2019 to be $150,000. She had a checking account with about "$18,000 or $19,000 in it," which was the money she received in May 2019 from a lump sum distribution from Dean's IMRF pension fund.

¶ 23 Sandra's monthly mortgage payment for her town home was $1028. She also testified that she contributed $800 monthly to the Life Changers International Church. She spent about $250 each month on vacations. She claimed that she did not have the ability to take vacations like she did during the marriage, especially lengthy vacations.

¶ 24 Tracy testified that she married Dean on July 12, 2013, and they live in Elkhorn, Wisconsin. She works about 10 hours each week and receives $1360 each month from her IMRF pension fund. Tracy's mother lives with her and Dean and does not pay rent or contribute to expenses. The year before the maintenance modification hearing, Tracy loaned her mother $4000 to make repairs on her condominium in order to sell it.

[3]Sandra's date of birth is August 21, 1960; thus, she was 51 years old at the time of the divorce.

¶ 25 Tracy testified that Dean handles the finances in their relationship and their finances are "all together." Tracy and Dean have a joint bank account, where her income is deposited. They use their joint account to pay for their expenses, including the mortgage, utilities, and groceries. She and Dean have a timeshare, which is also paid for through the joint checking account. In 2013, Tracy received a $750,000 inheritance. Some of that money was used to purchase the Elkhorn home, and $550,000 was deposited into the Merrill Lynch account. Dean contributed $100,000 to that account. The account was jointly titled. Tracy did not tell Dean when he could take money out of the account, but they would "discuss it" before Dean withdrew money. At the time of the hearing, the total amount in that account was $478,500. Tracy and Dean withdraw money from the account to pay for everyday living expenses, medical bills, and travel. Tracy and Dean vacation about once or twice each year.

¶ 26 At the conclusion of the hearing, the trial court reserved its ruling. On February 28, 2020, the court issued a detailed, written ruling and order on Dean's petition to terminate insurance and maintenance payment obligations to Sandra. The court also ruled on Sandra's rule to show cause against Dean for maintenance payment arrearage. The court made findings regarding the parties' finances, including their current gross income and net assets and applied those findings to the statutory factors set forth in sections 504 and 510(a-5) of the Act (750 ILCS 5/504, 510(a-5) (West 2020)).

¶ 27 As for Dean's current assets and income, the court found that Tracy inherited $750,000 in 2013 and then opened a joint Merrill Lynch investment account, into which Dean deposited $100,000 and Tracy deposited $550,000. After Tracy commingled her assets with Dean in 2013, "they have spent substantial funds in excess of their income over the last 5 years, including buying a house in Wisconsin, a vacation timeshare, pontoon boat and snowmobile." The court noted that they also used the account for legal fees and for out-of-pocket medical expenses. The court concluded that these disbursements reduced Dean's assets since 2013 and would not qualify as income under *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004). The court found that the current balance of the "jointly held" Merrill Lynch account was $476,667 and concluded that Dean had access to only 50% of the funds from that account. The court stated:

> "Most of the funds in the Merrill Lynch account were contributed by [Tracy] from an inheritance she received from her father. In addition, since this account is jointly held, [Dean] needs [Tracy's] approval prior to withdrawing any funds. Accordingly, the Court finds that [Dean] has access to no more than 50% of said account or $238,334.00."

The court found Dean's annual gross income to be $131,000, which included $78,468 from his IMRF pension fund and $7531 from the Merrill Lynch account, which represented 3.16% per year of half of the funds from that account ($238,334 x 3.16%). The court found Sandra's annual gross income to be $159,013, which included her salary of $100,956 from District 54 and a $50,514 annual payment from Dean's IMRF pension fund.

¶ 28 As for the parties' net assets, the court found that Dean had a total of $335,636 of assets solely in his name and Dean and Tracy jointly held assets in the amount of $786,350. The court stated that Dean was able to delay receiving social security retirement income, as well as delay withdrawing funds from his retirements accounts, because he was accessing funds from the joint Merrill Lynch account, which he held with Tracy. The court found that Sandra had individual net assets in the amount of $393,108.

¶ 29 In its written ruling, the court also analyzed whether the parties contemplated Dean's retirement at the time when they entered into the MSA. The court found that Dean's retirement was not contemplated when the parties entered into the MSA. The court also found that "there was no evidence that the parties contemplated and expected that [Sandra's] earnings would increase from $65,000.00 to [over] $100,000.00, an increase of 53% since the divorce." The court further stated that there was "no evidence that the parties contemplated and expected [Dean] would continue to pay maintenance to [Sandra] even though she is financially independent and earning a gross income of approximately $159,000.00 per year."

¶ 30 The court found that Dean had met his burden of proof in showing that a *substantial change* in circumstances had occurred since the judgment for dissolution of marriage was entered, in that Sandra's gross income had substantially increased from $65,000 to $159,000 per year. Sandra was financially independent and could meet her individual needs commensurate with the lifestyle she enjoyed during the marriage *solely* with her own gross income. The court then *reduced* Dean's monthly maintenance payment obligation to Sandra to $0 per month rather than terminate it as Dean had requested. The court found that it would be unfair to terminate it altogether because Sandra's circumstances could change in the future. By *reducing* the obligation, rather than *terminating* it, the court reasoned that Sandra could petition the court for a modification of the maintenance payment obligation if the need arose in the future. With respect to Dean's request to terminate his obligation to Sandra to provide life insurance, the court stated that the MSA provided that his life insurance obligation terminated upon Dean's retirement, so that obligation terminated by operation of the MSA when he retired on April 27, 2018.

¶ 31 Although the circuit court's ruling on Sandra's petition for rule to show cause is not at issue on appeal, we note that Dean was held in contempt related to Sandra's petition for rule to show cause. The court ordered Dean to pay Sandra retroactive maintenance from May 1, 2018, to June 20, 2018, which the court found was a reasonable date by which the court could have resolved any issues related to the QILDRO order. The court continued the case regarding the issue of attorney fees. On August 13, 2020, the court entered an order resolving the attorney fees issue. On August 28, 2020, Sandra filed her notice of appeal.

¶ 32 II. ANALYSIS

¶ 33 We note that we have jurisdiction to consider this matter, as Sandra filed a timely notice of appeal following the trial court's judgment. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 34 On appeal, Sandra contends that the trial court erred when it concluded that the increase in her income from $65,000 to $159,000, which comprised in part the $50,000 she received from Dean's IMRF pension fund upon his retirement and her increased employment income from $65,000 to over $100,000, constituted a substantial change in circumstances such as to warrant modification of Dean's maintenance payment obligation. We note that the parties do not dispute that the court may modify or terminate maintenance based on a substantial change in circumstances. The focus of the dispute centers around whether there is indeed a substantial change in circumstances such as to warrant the modification by the trial court.

¶ 35 Under 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 2020). A "substantial change in circumstances" under section 510 "means that either the needs

of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed." (Internal quotation marks omitted.) *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 132. The party who is seeking modification bears the burden of proving that a substantial change in circumstances has occurred. *In re Marriage of Bernay*, 2017 IL App (2d) 160583, ¶ 14.

¶ 36 Further, " '[w]hether a spouse may rely on his retirement as a change in circumstances to justify the modification of maintenance depends on the circumstances of each case.' " *In re Marriage of Folley*, 2021 IL App (3d) 180427, ¶ 38 (quoting *In re Marriage of Schrimpf*, 293 Ill. App. 3d 246, 252 (1997)). To determine whether retirement is a change in circumstances, a court considers, among other factors, the payor spouse's age, health, and motives; the timing of the retirement; the payor spouse's ability to pay maintenance after retirement; and the receiving spouse's ability to provide for herself. *Folley*, 2021 IL App (3d) 180427, ¶ 38. "Where a payor spouse has sufficient assets to continue to meet his maintenance obligation after retirement, a reduction in income does not, in and of itself, constitute a substantial change in circumstances to support a termination or reduction of maintenance." *Folley*, 2021 IL App (3d) 180427, ¶ 38. Also, "it is axiomatic that, to warrant termination, the 'change' must not have been contemplated when permanent maintenance was ordered." *Bernay*, 2017 IL App (2d) 160583, ¶ 18.

¶ 37 Courts consider the following factors set forth in section 510(a-5) of the Act when deciding whether to modify a maintenance award:

> "(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 2020).

¶ 38 Courts also consider the factors set forth in section 504(a) of the Act that are considered at the time that maintenance is initially awarded. 750 ILCS 5/504, 510(a-5) (West 2020); *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 18. Those factors 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;

(6.1) the effect of any parental responsibility arrangements and its effect on a party's ability to seek or maintain 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 to each party;

(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." 750 ILCS 5/504(a) (West 2020).

¶ 39 A trial court's determination regarding whether a substantial change in circumstances has occurred is reviewed under the abuse of discretion standard. *In re Marriage of Logston*, 103 Ill. 2d 266, 287 (1984). When a trial court determines that a party has established a substantial change in circumstances, the court may modify a maintenance award, but it is not required to do so. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 203 (2011). Further, the decision to modify a maintenance award is within the trial court's discretion. *Folley*, 2021 IL App (3d) 180427, ¶ 34. A trial court abuses its discretion when the ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view the trial court adopted. *Folley*, 2021 IL App (3d) 180427, ¶ 34. We review the court's factual findings under the manifest weight of the evidence standard. *In re Marriage of Bates*, 212 Ill. 2d 489, 523 (2004). A finding is considered against the manifest weight of the evidence where the opposite conclusion is clearly evident or the court's findings are unreliable, arbitrary, and not based on the evidence. *Folley*, 2021 IL App (3d) 180427, ¶ 34.

¶ 40 A. Substantial Change in Circumstances

¶ 41 Sandra contends that the increase in her gross income from about $65,000 to $159,000, which included her annual receipt of $50,000 from Dean's IMRF pension fund and her annual salary of slightly more than $100,000, was not a substantial change in circumstances. She contends it was an error for the trial court to determine that it was. She argues that the increase was not substantial such as to warrant modification of Dean's maintenance payment obligation.

¶ 42 As noted above, to warrant a termination of maintenance payments based on a substantial change in circumstances, "the 'change' must not have been contemplated when permanent maintenance was ordered." *Bernay*, 2017 IL App (2d) 160583, ¶ 18. In addition, we note that after the parties filed their appellate briefs in this court, we granted Sandra's motion to bring additional authority, based on the amendment to section 510(a-5) of the Act that became effective May 13, 2022, to the attention of the court. Although brought to our attention, Sandra argues that the amendment is inapplicable to this case. The amendment provides as follows:

> "Contemplation or foreseeability of future events shall not be considered as a factor or used as a defense in determining whether a substantial change in circumstances is shown, unless the future event is expressly specified in the court's order or the agreement of the parties incorporated into a court order. The parties may expressly specify in the agreement incorporated into a court order or the court may expressly specify in the order that the occurrence of a specific future event is contemplated and will not constitute a substantial change in circumstances to warrant modification of the order." Pub. Act 102-0823 (eff. May 13, 2022) (amending 750 ILCS 5/510(a-5)).

Sandra contends that the amendment does not apply since it did not go into effect until after this appeal was filed. She alternatively argues that even if the amendment does apply in this case because it became effective while this appeal was pending, the result would not change the MSA and therefore should not have any effect on this court's ruling. She asserts that Dean's retirement, and therefore her receipt of the IMRF pension payment, was a "future event" that was "expressly specified" in the parties' MSA agreement. Also, she argues that her salary increase was contemplated, expected, and not substantial enough to warrant a modification of maintenance.

¶ 43 As previously discussed, the circuit court found that Sandra's gross income substantially increased, based on her increased salary and her receipt of an annual payment of $50,000 from Dean's IMRF pension fund. We first address Sandra's increased salary.

¶ 44 1. Sandra's Salary Increase

¶ 45 The circuit court found that Sandra's substantial increase in gross income included her salary increase from $65,000 to over $100,000 annually. The court stated that "there was no evidence that the parties contemplated and expected that [Sandra's] earnings would increase" to that degree. The trial court noted that Sandra's salary increased by 53% and concluded that the increase was not a "moderate or small amount." See *In re Marriage of Connelly*, 2020 IL App (3d) 180193, ¶ 28 ("Moderate increases in both parties' incomes do not amount to a 'substantial change in circumstances.' "). Further, Sandra's increased salary with her continued employment with District 54, but in a different job, was not a future event that was expressly contemplated in the parties' MSA. Thus, the trial court found that, given Sandra's substantial increase in salary since the time of the divorce and the change in her needs, there was a *substantial* change in circumstances. See *Shen*, 2015 IL App (1st) 130733, ¶ 132 (a "substantial

change in circumstances" under section 510 "means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed" (internal quotation marks omitted)). The record supports the trial court's finding that not only has Sandra experienced a significant salary increase but her needs have also changed such that the level of financial support she previously needed, which was a factor in the maintenance award, is no longer present. Accordingly, the trial court did not abuse its discretion when it concluded that Sandra's income had substantially increased such that there was a substantial change in circumstances. The record supports the trial court's finding that the 53% increase in Sandra's income was not contemplated when the initial maintenance payment obligation was imposed on Dean.

¶ 46 2. Dean's IMRF Pension

¶ 47 Sandra argues that the trial court erred when it included her receipt of $50,000 annually from Dean's IMRF pension fund. She argues that Dean's retirement, and therefore her receipt of his IMRF pension, was expressly contemplated in the MSA. She also argues that the IMRF pension was a property distribution in the MSA and therefore could not constitute income to Sandra. However, we have determined that Sandra's increased salary from her employment *alone* was substantial, such as to warrant a change in circumstances as defined by statute and case law. Nevertheless, for completeness, we briefly address Sandra's arguments that the court erred when it included her receipt of her portion of Dean's IMRF pension in calculating her gross income.

¶ 48 We agree that Sandra's receipt of $50,000 from Dean's IMRF in her gross income calculation should not have been used to determine whether there was a substantial change in circumstances. Dean's retirement and therefore Sandra's receipt of her portion ($50,000) of Dean's IMRF pension fund were future events that were expressly specified in the MSA. When the parties entered into the MSA, Dean was 55 and Sandra was 51, and the parties expressly agreed that Dean's IMRF pension and the marital portions of the other retirement accounts would be split equally at some future date. The MSA also expressly provided that Dean's retirement would affect his life insurance obligation to Sandra, as it stated that Dean shall maintain his life insurance policy "until his retirement or maintenance terminates." Dean's retirement was an expressly specified future event in the MSA and directly at issue when the parties agreed to permanent maintenance in the MSA. See *Bernay*, 2017 IL App (1st) 160583, ¶ 18 (in finding that the petitioner's retirement did not constitute a substantial change in circumstances, the court stated that "the parties' finances and not-too-distant retirement plans were *directly* at issue," noting that the parties were both in their mid-fifties, the petitioner was in the middle of his career, and the respondent had only just started hers (emphasis in original)). Thus, using the reasoning in *Bernay*, the court should not have included Sandra's receipt of the $50,000 from Dean's IMRF pension that she received upon his retirement in her gross income, as his retirement was a future event expressly contemplated in the MSA.

¶ 49 Also, when the trial court included Sandra's receipt of her portion of Dean's IMRF pension fund in her gross income, that was an improper modification of the parties' property settlement agreement. " '[A] property settlement *** which has been approved by the court and incorporated in the judgment of dissolution[ ] becomes merged in the judgment, and the rights of the parties thereafter rest on the judgment.' " *McLauchlan*, 2012 IL App (1st) 102114, ¶ 21 (quoting *In re Marriage of Hoffman*, 264 Ill. App. 3d 471, 474 (1994)). Clearly, article XI in

the MSA sets forth the parties' agreement regarding the distribution of their retirement accounts, including, as relevant here, their agreement that the parties would equally split the marital portion of Dean's IMRF pension. Article VII of the MSA describes the parties' marital property, including "retirement and other accounts" that the parties acquired during the marriage, and expressly states that the property is completely resolved by the MSA and each party "waives any and all claims against the other for said property." Dean and Sandra expressly agreed that the MSA resolved the distribution of the parties' retirement accounts, they each waived any and all claims against the other for the property, and Dean does not allege that the MSA was obtained by fraud, coercion, or misrepresentation. Thus, the trial court should not have included Sandra's receipt of the agreed upon distribution from Dean's IMRF pension fund in her income. However, as previously stated, that inclusion does not change the result of our analysis, as Sandra's significant salary increase alone, without the $50,000 from Dean's IMRF pension fund, was a substantial change in circumstances as defined by statute and case law. Further, also as noted, the record suggests that other circumstances, which impact Sandra's financial situation, also changed favorably for Sandra since the time of the divorce. For example, by the time of Dean's petition to terminate his maintenance payment obligation, *all* of their children were emancipated and Sandra was no longer providing financial support for the parties' children for college and medical expenses as had been inferred at the time of dissolution of the marriage.

¶ 50 Having determined that the court did not abuse its discretion in concluding that there was a substantial change in circumstances due to Sandra's significant salary increase and favorable change in her needs, we turn to whether the court abused its discretion when it modified Dean's monthly maintenance payments to $0.

¶ 51 B. Modification of Maintenance From $1750 to $0 Per Month

¶ 52 As noted above, when a trial court determines that a party has established a substantial change in circumstances, the court may modify a maintenance award, but it is not required to do so. *Anderson*, 409 Ill. App. 3d at 203. Here, after determining that there was a substantial change in circumstances, specifically that Sandra's income had increased significantly, the court modified Dean's maintenance obligation from $1750 to $0 per month.

¶ 53 "A spouse should not be required to lower the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet his needs and the needs of his former spouse." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008). Maintenance can only be modified or terminated when there has been a substantial change in circumstances, which means "that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay maintenance has changed." *Shen*, 2015 IL App (1st) 130733, ¶ 132.

¶ 54 "The decision whether to modify or terminate maintenance is within the sound discretion of the trial court, and we will not disturb the trial court's decision absent an abuse of that discretion." *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 629 (2000). The abuse of discretion standard is highly deferential to the trial court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23. A trial court only "abuses its discretion when its ruling 'is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Taylor*, 2011 IL App (1st) 093085, ¶ 23 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)).

¶ 55 In this case, the parties entered into a MSA awarding maintenance to Sandra to allow her to maintain the standard of living to which she had become accustomed to during the marriage. This understanding of the purpose of the maintenance payments is clear from both the parties' arguments and the trial court's ruling. At the time of dissolution of the marriage, the parties' *joint* gross income was $208,245, with Dean earning $143,876 and Sandra earning $64,369. At that time, the parties had one minor child and two college-age children. The record suggests that Dean and Sandra were both, on some level, financially supporting their college-age children in addition to the minor child. Thus, it is reasonable to infer that the family's lifestyle for Dean, Sandra, and their children was established on the basis of their income at that time.

¶ 56 When the hearing on the petition to modify or terminate maintenance commenced approximately six years later, Sandra's employment income was in excess of $100,000. That is nearly equal to *half of the parties' joint gross income* at the time of the divorce. As noted, even without considering Dean's pension payment as part of her income, by the time of the petition, Sandra's financial situation had substantially improved from the time of the divorce. It is noteworthy that by the time of the modification hearing, *all* of the parties' children were past college age and emancipated, and there was no evidence of continuing support by Sandra. That fact supports the argument that Sandra is now in a better financial position than when she was married to Dean. Stated another way, the reason that Sandra was originally awarded maintenance payments no longer exists. The type of maintenance, contemplated by the MSA in this case, was clearly designed to supplement Sandra's employment income so that she could continue her marital lifestyle. There is a significant difference between the amount of money that she needed to enjoy that lifestyle ($21,000) and her own ability to earn slightly more than one and a half times the maintenance amount ($35,000), which makes it clear that the trial judge correctly determined that she now has the financial resources that she needs on the basis of her own earnings, making Dean's continued payments superfluous. Maintenance is not intended to be a windfall to the recipient nor punitive to the payor spouse. The evidence supports the trial court's finding that she is able to maintain that lifestyle solely with her own employment income, thereby meeting the requirement for reducing Dean's payment obligation to $0 per month.

¶ 57 Sandra asks us to focus on Dean's increased assets due to remarrying and his current spouse receiving an inheritance. However, that is not the pertinent analysis. The trial court did not state that Dean *could not afford* to make further maintenance payments. Instead, the court based its ruling on a substantial change in circumstances based on "*the needs of the spouse receiving maintenance*"; it did not focus only on whether "the ability of the other spouse to pay maintenance [had] changed." (Emphasis added.) *Shen*, 2015 IL App (1st) 130733, ¶ 132. In other words, the court found that Sandra was no longer in need of the previously contemplated maintenance payments, not that Dean was no longer able to pay the original amount. As such, Dean's increased assets over the last six years attendant to his marriage to Tracy were not determinative to the court's analysis in light of the *purpose* of the maintenance payments in this case.

¶ 58 "The optimal goal of maintenance is to create financial independence for the dependent former spouse." *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 384 (2009). When determining the reasonable needs of the dependent former spouse, the court has wide latitude in what factors to consider when ascertaining whether the former spouse can support himself or herself to an approximate standard of living during the marriage. *In re Marriage of Brankin*,

2012 IL App (2d) 110203, ¶ 10. When considering the relevant factors, the trial court is not required to grant them equal weight as long as the balance struck by the court is reasonable. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293 (2010). In this case, the trial court held an extensive hearing. The court reached its conclusion after considering all of the evidence, which included extensive testimony and documents submitted by the parties.

¶ 59 We may affirm the trial court's ruling on any basis in the record. See *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). The record in this case clearly supports the trial court's findings, conclusions, and rulings. In sum, the record reflects that the trial court took into consideration the financial situation of both parties. Consistent with the purpose of maintenance, the court carefully considered the substantially changed financial individual circumstances of Sandra, which more than satisfied her needs that previously warranted maintenance payments by Dean. Thus, while we conclude that the trial court improperly included the payment from Dean's pension fund to Sandra for purposes of computing her annual income, in the context of continuation of maintenance, that inclusion has no impact on the ultimate fact that her individual employment income has changed significantly for the better. By the trial court's finding, Sandra has been able to maintain the standard of living to which she was accustomed during the marriage on the basis of her own significant salary increase. Thus, the court ruled that she was no longer in need of maintenance payments from Dean. It is of no moment that Dean now has access to more money because of his marriage to Tracy. The primary question is whether *Sandra* is now financially independent to the level that allows her to enjoy the standard of living that she had during her marriage to Dean. By the time of the modification hearing, Sandra was, individually, making nearly half of the income that had sufficed for the entire household when she and Dean were married. Yet, there was no longer the financial obligations to provide for their children. Thus, assuming *arguendo* that Dean had access to significant amounts of money because of his marriage to Tracy, it does not change that analysis. The point of maintenance in this case was to allow Sandra to maintain the standard of living which she had *during* the marriage. The record establishes that that goal has been achieved. Based on this record, there was clearly a substantial increase in Sandra's salary, which equated to a substantial change in circumstances. If the maintenance payments were intended to allow Sandra to maintain the lifestyle of the marriage before the divorce, the record supports the trial court's finding that she is now able to do so based solely on her substantially increased income. It follows that the trial court did not abuse its discretion when it modified Dean's maintenance payment obligation to Sandra.

¶ 60 The dissent goes to great lengths to analyze Dean's assets as they currently stand. However, that misses the point and the reason for the maintenance award to Sandra in the first place as well as the established statutory and case law, which underpins the trial court's ruling. In the simplest terms, the trial court exercised its discretion to modify the maintenance award, which was intended to allow Sandra to live the same lifestyle as she had during her marriage. Before making the modification, the court determined that there was a substantial change in circumstances. The record shows that Sandra's individual substantial salary increase satisfied her current needs to the level she enjoyed during her marriage, which were previously met by Dean's maintenance payment obligation. Thus, the original purpose of the maintenance award was clearly satisfied, thereby allowing the court to modify the maintenance amount that Dean was required to pay to $0.

¶ 61 The record supports the trial court's ruling that Sandra no longer *needed* Dean's maintenance payments to maintain her marital lifestyle. We note that the trial court rejected Dean's request to terminate his maintenance payment obligations. Rather, the court exercised its discretion to modify Dean's payment obligations to $0, leaving Sandra with the option to seek reinstatement of the payments should her financial situation change for the worse in the future. In our view, the court acted appropriately within its discretion, and the record amply supports that action. Accordingly, the trial court did not err nor abuse its discretion in its ruling; therefore, we affirm the circuit court's judgment.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 64 Affirmed.

¶ 65 JUSTICE CONNORS, concurring in part and dissenting in part:

¶ 66 I concur in part and respectively dissent in part. I agree with the majority that there was a substantial change in circumstances based on Sandra's increased salary. I also agree with the majority that the court should not have included Sandra's receipt of the $50,000 from Dean's IMRF pension in her income. However, I disagree with the majority on the second part of the analysis regarding the trial court's decision that modified Dean's maintenance obligation from $1750 to $0 per month. As noted by the majority, when a trial court determines that a party has established a substantial change in circumstances, a court may modify a maintenance award, but it is not required to do so. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 203 (2011). Based on the record, I would find that the circuit court abused its discretion when it reduced the maintenance the parties agreed to in the MSA to $0 per month.

¶ 67 The majority concludes that the type of maintenance contemplated by the MSA was "clearly designed to supplement Sandra's employment income so that she could continue her marital lifestyle" and that the evidence supports the trial court's finding that Sandra is able to maintain that lifestyle solely with her own employment income. The majority also states that the trial court "found that Sandra was no longer in need of the previously contemplated maintenance payments, not that Dean was no longer able to pay the original amount," and then concludes that "[a]s such, Dean's increased assets over the last six years attendant to his marriage to Tracy were not determinative to the court's analysis in light of the *purpose* of the maintenance payments in this case." (Emphasis in original.) *Supra* ¶ 57. I acknowledge that the trial court concluded that based on Sandra's gross income, she could meet her needs commensurate with her lifestyle and was financially independent. However, Dean's income and assets are also relevant factors for the trial court to consider in the analysis regarding whether to modify maintenance to $0.

¶ 68 As discussed by the majority, under 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 2020). A "substantial change in circumstances" under section 510 "means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed." (Internal quotation marks omitted.) *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 132. However, after determining that a substantial change in circumstances occurred, a trial court will then consider

whether a modification of maintenance is warranted under the factors listed in sections 510(a-5) and 504(a) of the Act. *In re Marriage of Folley*, 2021 IL App (3d) 180427, ¶ 35. Two of the factors listed in section 510(a-5) of the Act that courts consider include 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" and "the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage." 750 ILCS 5/510(a-5)(7), (8) (West 2020). In section 504(a) of the Act, one of the factors that a court considers is "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." *Id.* § 504(a)(1). Thus, when determining whether to modify maintenance, in addition to Sandra's needs and income and the standard of living established during the marriage, Dean's assets and income were also relevant. The court however did not properly calculate the total amount of Dean's income.

¶ 69 In the circuit court's analysis regarding Dean's income, the court did not impute the total amount of funds from the Merrill Lynch account when it calculated his income. In the circuit court's written order, the court found that Tracy inherited $750,000 in 2013 and she used some of that money to purchase Dean and Tracy's Wisconsin home and "transferred" about $550,000 into Dean and Tracy's joint Merrill Lynch investment account. In the trial court's analysis regarding Dean's gross income, the court stated that "subsequent to [Tracy] commingling her assets" with Dean in 2013, "they have spent substantial funds in excess of their income," including purchasing the Wisconsin home, a vacation timeshare, a pontoon boat, and a snowmobile. The court concluded that these disbursements "reduced [Dean's] assets since the year 2013 and would not qualify as income." The court found that the current balance in the Merrill Lynch investment account was $476,667, and it used this amount when calculating Dean's gross income.

¶ 70 Under section 504(b-3), "gross income" "means all income from all sources, within the scope of that phrase in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included." *Id.* § 504(b-3). Section 505 of the Act, which concerns gross income for child support sources, states that gross income is defined as "the total of all income from all sources." *Id.* § 505(a)(3)(A). Income has the same meaning with regard to maintenance and child support, and the definition is "broad and expansive." *In re Marriage of Dahm-Schell*, 2021 IL 126802, ¶ 39. Further, in *In re Marriage of Dahm-Schell*, our supreme court has explained that income " 'includes gains and benefits that enhance a noncustodial parent's wealth and facilitate that parent's ability to support a child.' " *Id.* ¶ 40 (quoting *In re Marriage of Mayfield*, 2013 IL 114655, ¶ 16). Further, in *In re Marriage of Dahm-Schell*, our supreme court has defined income "as any form of payment to an individual, regardless of its source and regardless of whether it is nonrecurring, since 'the relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made by the circuit court.' " *Id.* (quoting *In re Marriage of Rogers*, 213 Ill. 2d 129, 138 (2004)).

¶ 71 Applying these principles, the entire amount of funds from Tracy's inheritance that Tracy "transferred" to Dean and Tracy's joint account in 2013 constituted a gain in income to Dean for the purposes of determining whether maintenance should be modified. The funds had never been previously included in the calculations of Dean's assets or income. See *id.* ¶¶ 52, 53, 63 (where the payor's inheritance received predissolution was never included in the initial

calculations of his support obligations, the inheritance could be imputed to him for income support purposes, as "[t]he determination of support is based on whether that money has been previously imputed as income against the individual receiving the distributions"). The circuit court did not include the full amount that Tracy "transferred" to Dean and Tracy's joint account in 2013 to determine his income and assets solely in his name when reviewing whether to modify maintenance to $0. See *id.* ¶ 63 ("all income must be taken into consideration when setting support"). Thus, the court did not properly calculate Dean's assets and income when it reduced its maintenance obligation to $0.

¶ 72 Further, when the circuit court calculated Dean's gross income, the court found that Dean had access to only 50% of the funds in the joint Merrill Lynch account. In reaching its conclusion, the court did not provide any legal analysis, but stated that "[m]ost of the funds in the Merrill Lynch account were contributed by [Tracy] from an inheritance she received from her father" and "since this account is jointly held, [Dean] needs [Tracy's] approval prior to withdrawing any funds." The court found that Dean had "access to no more than 50% of said account or $238,334.00," which represented 50% of the current balance of $476,667. From my review of the evidence, the court's finding is against the manifest weight of the evidence. Dean testified that the Merrill Lynch account was "jointly titled," Tracy testified that it was a "joint account," and each testified that they each deposited their money into the account when they opened it. According to Dean's financial affidavit dated October 24, 2019, the "owner" of the account is "Dean and Tracy Bostrom." Although Dean testified that he would not use the money without Tracy's approval because it was her father's inheritance, Tracy testified that she did not have a superior right to the money and she never told Dean when he could take money out of it. Tracy also testified that Dean handled all the finances in their relationship and that their finances were all together. Dean acknowledged that at his deposition testimony; he stated that the money in the account was "my money" and "our money." Both Dean and Tracy testified that they used the Merrill Lynch account when they needed money to pay for their everyday living expenses. Based on the record, the court's conclusion that Dean had access to only 50% of the funds in the account was not based on the evidence. The evidence shows that Dean had access to the entire account. Further, I note that "when a sole owner of a bank account adds an apparent joint tenant to the account, the law presumes that the original owner intends a gift." *Konfrst v. Stehlik*, 2014 IL App (1st) 132113, ¶ 27; see also *In re Estate of Shea*, 364 Ill. App. 3d 963, 968-69 (2006). Further, "the function of a joint account agreement is to *immediately* share ownership." (Emphasis in original.) *In re Estate of Shea*, 364 Ill. App. 3d at 970. Here, where both parties admitted that the Merrill Lynch account is jointly titled and that both of their names are on the account, the money from Tracy's inheritance that she contributed to the account was a gift to Dean and he and Tracy shared ownership of the joint account. Thus, the court did not properly calculate Dean's gross income and erred when it found that he had access to no more than 50% of the account.

¶ 73 In addition, the trial court's decision to reduce maintenance to $0 was based on the fact that Sandra was financially independent and could meet her needs commensurate with the lifestyle during the marriage. However, as previously noted, Dean's assets are also relevant to the analysis regarding whether the trial court abused its discretion when it reduced Dean's maintenance obligation to $0 per month. The evidence regarding Dean's assets does not demonstrate that Dean did not have the ability to meet his needs and pay at least some portion of the maintenance that the parties agreed to in the MSA. See *In re Marriage of Folley*, 2021

IL App (3d) 180427, ¶¶ 40-41, 44 (despite the payor's forced retirement and substantial decrease of income, the record was clear that he had the present ability to continue to pay maintenance in "some amount" and arguably the ability to meet his full maintenance obligation). Dean testified that between August 25, 2018, and October 24, 2019, he deposited $236,459.34 into his Chase checking account and spent $231,861.53, or $17,500 per month. This was while he was retired and had recently filed his January 24, 2018, petition to terminate maintenance based on his earnings being "significantly reduced." Further, the trial court found that Dean and Tracy had joint net assets in the amount of $786,350, which represented the $257,134 Wisconsin home (fair market value of $625,000 minus the $367,866 mortgage balance), an $11,000 timeshare, $9549 in their joint account bank accounts, $476,667 in their joint Merrill Lynch account, a $12,000 pontoon boat, a $14,000 Kia Sportage, and a $6000 Polaris snowmobile. The court found that Dean had assets solely in his name of $335,636, which represented a $10,000 Ford Explorer and two Merrill Lynch IRA accounts in the amounts of $300,087 and $25,549. Adding Dean and Tracy's joint assets and the assets solely in Dean's name, the total assets are $1,121,986, which represents the assets that are solely in Dean's name and Dean and Tracy's assets that are titled jointly. Accordingly, the record does not show that Dean did not have the ability to pay the maintenance that the parties agreed to in the MSA such that it should have been necessarily reduced to $0. See *id.* ¶¶ 40-41 (where the recipient spouse argued that the court abused its discretion by modifying the maintenance to $0 and the payor presented evidence that his income was substantially reduced after retirement and his expenses exceeded his income, the reviewing court found the evidence was insufficient to support reduction of maintenance to $0 and remanded to the trial court, noting that the payor had substantial assets from which to pay maintenance).

¶ 74 As noted by the majority, when a trial court considers the relevant factors, it is not required to grant them equal weight as long as it strikes a reasonable balance. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293 (2010). However, because the court did not properly calculate Dean's assets solely in his name or his income, which are relevant to the analysis regarding modification of maintenance, and because the record does not show that he did not have sufficient assets to pay some amount of the maintenance obligation, I would remand for the court to rebalance the factors.

¶ 75 For the reasons stated above, I concur in part and respectfully dissent in part. I would affirm the trial court's order that found that there was a substantial change in circumstances. However, as for the second part regarding whether the trial court abused its discretion when it reduced Dean's maintenance obligation to $0, I would reverse and remand to the trial court with directions to recalculate the parties' incomes and assets and reexamine its decision to modify Dean's maintenance obligation to $0.