

NOTICE
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2019 IL App (5th) 180237-U

NO. 5-18-0237

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
PAM D. BURRIS,)	Jackson County.
)	
Petitioner-Appellee,)	
)	
and)	No. 15-D-151
)	
DAVID P. BURRIS,)	Honorable
)	W. Charles Grace,
Respondent-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order awarding the petitioner maintenance is affirmed where it was not against the manifest weight of the evidence to conclude that she was not residing with another person on a resident, continuing, and conjugal basis in violation of section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(c) (West 2016)).

¶ 2 The respondent, David Burris (David), appeals the judgment issued by the circuit court of Jackson County dissolving the parties' marriage and awarding the petitioner, Pam Burris (Pam), maintenance after concluding that she was not cohabiting with another person on a resident, continuing, and conjugal basis as prohibited by section 510(c) of the

Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(c) (West 2016)).¹ For the following reasons, we affirm.

¶ 3 David and Pam were married in Richlands, Virginia, in 1981. They had three children during the marriage, all of whom are now over the age of 18. David worked as a construction contractor; Pam stayed home and took care of the children. They resided in Murphysboro, Illinois, until approximately July 24, 2015, when Pam moved out of their home.

¶ 4 On August 27, 2015, Pam filed a petition for dissolution of marriage, citing irreconcilable differences. She requested that the trial court award her maintenance.

¶ 5 On September 22, 2015, the parties entered into a mutual no contact agreement, agreeing to communicate with each other only through legal counsel and to remain at least 100 feet from the other at all times. In consideration of the agreement, Pam withdrew her August 26, 2015, petition for an order of protection against David, whom she alleged had engaged in harassing, abusive, and threatening behavior.

¶ 6 On January 21, 2016, Pam filed a motion for rule to show cause as to why David should not be held in contempt for his failure to comply with the no contact agreement. Pam alleged that David continued to harass her via phone and text message. Specifically, she alleged that (1) David manipulated her into having a conversation at their daughter's

¹The statute states: "Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis. An obligor's obligation to pay maintenance or unallocated maintenance terminates by operation of law on the date the obligee remarries or the date the court finds cohabitation began." 750 ILCS 5/510(c) (West 2016).

house on Thanksgiving weekend, 2015, when she arrived at the house after representations by their daughter that David was not present, when, in fact, he was; and (2) David attempted to use their daughter and grandchildren's serious injury following an automobile accident on January 14, 2016, to coerce her into speaking with him by refusing to leave the hospital where their daughter and grandchildren were receiving care unless she spoke with him. On January 28, 2016, the trial court granted the motion.²

¶ 7 On October 24, 2016, a hearing was held on the issue of maintenance. Pam testified that, at one time, she had worked in the home healthcare field but had developed degenerative disc disease that denied her the ability to lift, bend, and twist. As such, she was no longer able to work, and her sole income was her \$418 per month disability check. She agreed that she had more medical bills and other ongoing expenses than a person of her same age in normal health and that it would be difficult for her to become trained in a new line of work due to her age and disability. She stated that, during the marriage, she lived in a house and had money for bills and to buy gifts for the children; after the parties' separation, she lived in a camper with Randy Patton and had no income.

¶ 8 Pam explained that she moved in with Patton, whom she had known for approximately four years, because David was stalking her. She recounted that she moved in with her friend, Nancy Wright, around July 17, 2015, but ended up going back to her house with David after he came to Nancy's home to talk her into returning home. She left David again, the following week, on a Sunday; she planned on moving in with a friend,

²The record reflects that David was ordered to appear on February 16, 2016, but the hearing was rescheduled to March 1, 2016. The transcript of the hearing reflects that the parties agreed to make the mutual no contact agreement a court-ordered agreement.

"but whenever I left, he took the debit card, the checkbook and the cash." She stated that David was engaging in threatening behavior at the time, text messaging her and following her. She explained that she was at Nancy's house on Monday and David came over to convince her to go out to lunch with him. When Pam refused, David "threatened to go home and get a gun and come back." Pam testified that after this, Patton told her that she could stay with him and "he would help her out." She explained that she took him up on this offer because she did not want to involve Nancy and her family in the situation. She testified as follows:

"I didn't know what [David] would do. He was upset. I didn't know if he would go home and bring a gun. So at that point in time, I was scared and I left town for a few days[.]"

She stated that on the night she left David, she stayed at a motel with Patton. She agreed that she let David believe that she had sex with Patton, but she did not, noting that the motel had two beds. The next night, she stayed with Patton in his one-bedroom camper with a pull-out couch. At the time of the hearing, she had been living with Patton in his camper for 15 months except for an approximately one-month stay with one of her daughters, whom she was helping recover from car accident injuries. She agreed that she moved in with Patton because of both her financial situation and David's threatening behavior. She did not pay him rent or contribute to the bills.

¶ 9 Pam submitted text messages from David into evidence. Pam testified that they were sent around August 1, 2015. The text message time stamped 1:26 p.m. stated:

"The next time I see you 2 pieces of shit out in public I will come in and make a scene. And let everyone know just who u fuckers are and if I didn't [*sic*] get my

phone back by Friday the rest of your shit will be thrown out in the fucking yard[.]"

The text message time-stamped 1:27 p.m. stated:

"How in hell [*sic*] can u degrade yourself to where u are now nobody will ever know. But u have and who don't know [*sic*] what you have done will know. U are a low life camper cunt bitch that has no regard for anyone else except u. But you being happy is all that matters[.]"

The text message time-stamped 2:10 p.m. read:

"You think I am supposed to let you two year [*sic*] my family apart and not respond lot of people get killed over that shit wake up mom I love you[.]"

Pam testified that the text messages frightened her because she did not know what David would do. She also recounted a time around Christmas 2015 when she was stopped on the side of the road due to an accident, and David pulled in behind her, got out, and walked towards her car, even though the no contact order agreement was in place at the time.

¶ 10 Pam agreed that she spends a lot of time with Patton because she is scared to be alone but noted that she frequently goes to see her children and grandchildren. Estimating that "90 percent of the time" she was by herself, she noted that Patton was helping a friend in DeSoto remodel his house and thus was gone four days per week from 7 or 8 a.m. to 5 or 6 p.m.

¶ 11 She testified that they do not share holidays. On Thanksgiving, she cooked dinner at a friend's house and "[Patton] was out of town for a few days during that time." On Christmas, she went to her daughter's house. She stated that she was with Patton on the Fourth of July in 2016 because they were staying at his sister's house in Tennessee.

¶ 12 Pam stated that she sometimes shares meals with Patton but other times they individually cook and eat whatever they want. She stated that they each do their own laundry, though sometimes she will throw some of his in with hers "if there's just a few things." She has never bought anything for the camper. She receives mail at his camper but agreed that they do not share bank accounts or title on any vehicles, and they are not beneficiaries of each other's wills or retirement benefits. She testified that, after she left David, Patton loaned her money to pay for her medication and co-pays for doctors' visits, insurance on her car, personal items, and gifts for the children. Once Pam received her approximately \$11,000 lump-sum disability payment, she repaid him. She agreed that Patton has not given her any money since she began getting her monthly disability payments.

¶ 13 Pam testified that, soon after she left David, she went with Patton to Michigan. She noted that she stayed at his sister's house, and Patton stayed at his brother's house. She had also been to Tennessee and Indiana with Patton when he went for work, and they were provided separate bedrooms. She explained that she joined him because she did not want to stay back by herself; she did not know if David would try to contact her in person when Patton was gone. She agreed that she declined an invitation to move in with her daughter.

¶ 14 On cross-examination, the following exchange occurred:

"Q. So to sum it up, you moved out of [David's] and your marital residence in July of 2015 and lived basically exclusively with Mr. Patton at his camper and you considered him your boyfriend; is that correct?

A. Not when I left, no.

Q. So you're basically cohabiting with your boyfriend; is that right?

A. We have no commitments. We have no—yes.

Q. Yes, you are cohabiting with your boyfriend, correct?

A. Yes.

Q. And basically if somebody was to look at it from the outside, you look like man and wife, correct?

A. I don't think so."

Pam reiterated that she and Patton sleep in separate beds, are not having sexual relations, and have not had sexual relations. She denied wearing an engagement ring. She testified that she and Patton do not intend on having a relationship, getting engaged, or getting married.

¶ 15 David called the parties' daughter, Wendy Worthen, to testify. Wendy testified that, in May 2015, she and her father discovered that Pam and Patton had texted over 3000 times and spoken on the phone for about 1700 minutes. She stated that her mother told her that she was talking to Patton as her friend. She stated that David was "devastated" when Pam moved out.

¶ 16 Wendy testified that Pam had told her about David's threats, but, when she asked David about them, David told her that Pam was lying. She recalled that, "when I got both of them together [on July 26, 2015], my mother told me that it was all a misunderstanding" and that she was lying about David threatening her life and being terrified of him. She noted that she was "not real sure what the reasoning was, but [Pam] did tell me a couple of times that if I went to [David] and talked to him about these

incidents that she was afraid that he might do something to her." She testified that Pam answered in the affirmative when she asked if she was cheating on David.

¶ 17 Wendy testified as to the incident at Thanksgiving in 2015. She stated that she was at David's house preparing the meal, and Pam agreed to come over and prepare the dressing. She confirmed that "[David] was not supposed to be there" but "after she had gotten there, I did tell her that he was there." She told Pam that David wanted to speak with her, and Pam agreed to "give him a few minutes." She did not recall Pam acting scared. She agreed that, before Pam left David, Pam had told her that she was scared of David.

¶ 18 Wendy testified that Pam "has been known to lie a lot." She explained that Pam used a credit card in her name, recalling that, "she told my father that the card had come in the mail and she was going to give it to me and just forgot." When asked to give other examples, she noted her earlier testimony that Pam lied to her about being afraid of David. She also recounted that Pam had told her that she could no longer go to church with her because "before she left for church [David] would pour beer on her and blow smoke in her face." She testified that, on the day she confronted Pam and David, Pam told her that this was also a misunderstanding and not true.

¶ 19 Wendy stated that Patton had never been to her house, and she had only been to his residence once, to pick up her mother, and did not go inside. She testified that Pam and Patton hold themselves out as boyfriend and girlfriend; she noted that at a court date, she saw them hold hands, give each other a kiss, and Patton open the door for Pam. She asserted that Pam had other places to go besides Patton's camper, stating that one of

Pam's friends offered for Pam to stay with her in exchange for cleaning services. Wendy stated that the friend's name was Jane but could not remember her last name. She agreed that Pam told her that, in the past, she has called the police because of something David said or did.

¶ 20 The trial court presented the text message exhibits to Wendy and asked if she would be afraid if she received those messages from a boyfriend. She replied that she would if he was a violent person, "but I have in the past had threats before that I've kind of just brushed off because of it [*sic*] being mad, upset." She agreed that telling someone that "a lot of people get killed over that shit" sounds like a threat but stated that David "was more talking about there [are] people that do *** it. He wasn't saying that he was going to go and kill her." She stated that she thought David was "exposing [Pam] for what she is" and that Pam was lying in the order of protection. The court asked how she knew that, and the following exchange occurred:

"A. Because I've never—there was only one person in my life that I ever heard of my dad not wanting my mom to be around, one person, and in this order of protection she put, 'He chose my friends, he chose what I could and couldn't wear.' My mom would walk out the house with her boobs almost popping out. The only thing that dad did not like her to wear to the lake in front of all the men was a bikini.

Q. All of that is why you chose to come in and testify against your mother today?

A. I actually didn't know I would be. I've just been sticking by my dad through all of this."

¶ 21 David Burris testified that Pam admitted to him that she slept with Patton the weekend that she left. He stated that he has never threatened Pam or threatened to kill

her but had hit her out of anger once in the past. He stated that the text messages that he sent "just spoke the truth" and that "she knew how to take" his text message that "people get killed over shit like this." In regards to his text message saying he would "expose" her, he felt that it was not a threat but agreed that he was saying that he was going to do something that she did not want him to do. He agreed that he called her names such as "mother fucker" and "fucking skank" in other text messages. He agreed that he went to Nancy's house to convince Pam to come home but stated that he did not threaten to get a gun and come back. He stated that he owns a gun and that Pam is aware of that fact.

¶ 22 In regards to the events of Thanksgiving 2015, David testified that, once Pam knew he was there, she did not leave but instead stayed in the house and talked to him. He did not think that she acted scared of him at that time. He also recalled the incident around Christmas 2015 where he pulled in behind Pam at the scene of a car accident. He stated that he got out of his car and "was just going to go out and talk to her" but, because paramedics told him to move so that they could pass, he did not speak with her.

¶ 23 David testified that the police were once called to their house after they got into a "little argument," and Pam attempted to overdose on pills. He stated that Pam never called the police on him. He asserted that Pam knew she did not have to be afraid of him and agreed that she got the order of protection "for fun."

¶ 24 Pam was recalled as a witness and again asked about her relationship with Patton. She recounted a story where he took her to breakfast for her birthday, on May 28, 2015, and gave her a rose. She agreed that she lied to David about who had given her the rose.

¶ 25 On February 6, 2017, Pam filed a motion to set a date for a final hearing, or, in the alternative, to grant temporary maintenance. On March 22, 2017, the trial court granted Pam's motion for temporary maintenance. David was ordered to pay Pam \$542 per month until the final judgment was issued.

¶ 26 On September 28, 2017, the trial court issued an order regarding maintenance. It awarded Pam \$396.61 per month in permanent maintenance, based on the statutory formula.

¶ 27 The trial court noted that David did not contest the maintenance factors but rather raised a defense that Pam had been cohabiting with another person on a resident, continuing, and conjugal basis within the meaning of *In re Marriage of Herrin*, 262 Ill. App. 3d 573 (1994), which laid out six factors to consider when determining whether a *de facto* husband-and-wife relationship exists.³

¶ 28 The trial court first confirmed that the statutory factors for entitlement to maintenance under section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)) were present in this case. It noted that Pam was awarded only her doll collection, \$4000 cash, a 2002 Mazda Protégé, and her lump-sum disability check, while David was awarded the marital residence, a 2009 Mazda 6, and a Ford F-250 truck. It stated that Pam's monthly disability check was all the money that she had available to her, which differed from the standard of living available to her during the 36-year marriage. Pam raised the parties'

³While the trial court does not explicitly state the factors, they are as follows: (1) the relationship's length; (2) the amount of time spent together; (3) the nature of the activities engaged in; (4) the interrelation of their personal affairs; (5) vacationing together; and (6) spending holidays together. See *Herrin*, 262 Ill. App. 3d at 577. The test is the totality of the circumstances. *Id.*

daughters and only worked during their years in school; therefore, "the court finds plenty of reason to award maintenance here."

¶ 29 The trial court next discussed the meaning of *de facto* marriage under Illinois law. It pointed to *In re Marriage of Sunday*, 354 Ill. App. 3d 184 (2004), where the appellate court found it relevant that the increased frequency of the man's sleepovers was a result of the husband's harassment of his wife. The court then stated that "the *believable* evidence was that text threats and threats regarding use of his gun, stalking, and other harassment drove [Pam] from the marital home to seek refuge at a female friend's house but after [the] first night of his harassment *** she only felt safe at her male friend's home *** and having no other choice that afforded her safety, went to her male friend's home." (Emphasis in original.) It found that Pam could not afford to maintain a separate residence but still kept separate accounts from Patton, paid him back the \$11,000 loan, and used her income for her bills, food, and medical necessities. It also noted that Pam and Patton shared only part of one holiday together. It concluded that Pam's testimony was believable; that the evidence was un rebutted by David; and that he lacked credibility, "particularly in his testimony about the threats, not really meaning what he said and texted or otherwise explained it away, and his harassment of her, which was corroborated by photos of text messages."

¶ 30 The trial court discussed *In re Marriage of Miller*, 2015 IL App (2d) 140530, wherein the appellate court concluded that the *Herrin* factors are relevant but they are not to be applied without contextual considerations. Citing *Miller* for the tenet that a "key emotional factor that is likely present in any *de facto* marriage [is] *intended permanence*

and/or *mutual commitment* to the relationship" (emphases in original), it found that Pam and Patton's relationship was not a *de facto* marriage because there was no evidence of their intention to have a permanent relationship.

¶ 31 On October 27, 2017, David filed a motion for reconsideration of the order granting maintenance. On March 21, 2018, a hearing was held on the motion. The trial court reiterated that it found Pam's testimony to be credible and that David and Wendy's testimony lacked credibility. It also noted that Pam was "badgered" into testifying that she was cohabiting with Patton and that there was "probably a 60-second pause in the proceedings before she made that answer." It concluded that there was no *de facto* marriage intended here and denied the motion to reconsider.

¶ 32 The trial court entered the judgment of dissolution of the parties' marriage that same day, which incorporated the order awarding Pam permanent maintenance. David appeals.

¶ 33 On appeal, David does not contest that Pam is entitled to maintenance under the statutory factors. See 750 ILCS 5/504(a) (West 2016) (enumerating the relevant factors for determining whether a maintenance award is appropriate). Rather, he argues that because of her *de facto* marriage to Patton, she is proscribed from receiving maintenance pursuant to section 510(c) of the Act, which provides that a party's maintenance may be terminated when it is shown that the party is engaged in a resident, continuing, conjugal relationship with a third party. *Id.* § 510(c).

¶ 34 The rationale behind statutory termination of maintenance when the recipient spouse cohabits with another person on a resident, continuing, and conjugal basis is that it

addresses the inequity created when the recipient spouse becomes involved in a husband-wife relationship but does not legally formalize it so that he or she can continue receiving maintenance. *In re Marriage of Arvin*, 184 Ill. App. 3d 644, 649 (1989). Termination of maintenance on this basis therefore requires a showing that the recipient spouse is involved in a *de facto* husband-wife relationship. *Id.*

¶ 35 The party seeking termination of the maintenance has the burden of establishing that the receiving spouse is involved in a *de facto* marriage with a third party. *In re Marriage of Snow*, 322 Ill. App. 3d 953, 956 (2001); *Miller*, 2015 IL App (2d) 140530,

¶ 40. A reviewing court will not disturb a circuit court's determination of a *de facto* marriage relationship's existence unless that finding is contrary to the manifest weight of the evidence. *Sunday*, 354 Ill. App. 3d at 189. A finding is considered contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident, or the decision is unreasonable, arbitrary, or not based on the evidence. *Miller*, 2015 IL App (2d) 140530, ¶ 40.

¶ 36 In determining whether a petitioner has met his or her burden of demonstrating that the receiving spouse is involved in a *de facto* marriage with a third party, a court looks to the totality of the circumstances and considers the following nonexhaustive list of factors: (1) the length of the relationship; (2) the amount of time spent together; (3) the nature of the activities engaged in; (4) the interrelation of personal affairs, including finances; (5) whether they vacation together; and (6) whether they spend holidays together. *Herrin*, 262 Ill. App. 3d at 577.

¶ 37 While a useful guideline, the Illinois Supreme Court has not adopted the six-factor analysis as sufficient to encapsulate the totality of the circumstances; rather, each termination case "turns on its own set of facts," and "just as no two relationships are alike, no two cases are alike." *Miller*, 2015 IL App (2d) 140530, ¶¶ 40, 47. Courts should look for signs of intended permanence and/or mutual commitment to the relationship and look to the totality of the circumstances to determine whether the relationship functions practically and economically in a marriage-like way. *Id.* ¶¶ 48, 50.

¶ 38 David compares this case to the facts of *Snow*, 322 Ill. App. 3d at 955-56, to support his argument that the trial court's determination was against the manifest weight of the evidence.

¶ 39 In *Snow*, the recipient spouse (Dawn) lived with her boyfriend, Jaime, for approximately 18 months. *Id.* at 955. Jaime testified that he eventually paid Dawn some rent, and they agreed to split the cost of utilities and groceries while he maintained the pool. *Id.* He described their relationship as "sex partners." *Id.* Dawn testified that Jaime did not pay her rent but did pay for his own groceries and phone and that he would sometimes give her money for food, gas, or pool chemicals. *Id.* They did not commingle funds but did exchange Christmas and birthday presents. *Id.* She stated that they only slept together once. *Id.* She agreed that they socialized together two to three times a month for dinner or drinks. *Id.* The trial court found Jaime's testimony more credible than Dawn's and found that the petitioner-husband established that Dawn engaged in a continuing conjugal relationship with Jaime. *Id.* at 955-56. The appellate court concluded that the decision was not against the manifest weight of the evidence. *Id.*

¶ 40 We do not find *Snow* factually analogous to this case. Unlike Pam and Patton, Dawn and Jaime engaged in dating activities and exchanged Christmas and birthday presents. Significantly, Jaime was called to testify and described their extensive sexual relationship. The trial court found this testimony credible. Here, Patton was never called to testify about the nature of his relationship with Pam, and the trial court found Pam's testimony credible.

¶ 41 David correctly notes that a sexual relationship does not have to exist in order to find that a relationship has a conjugal basis. The Illinois Supreme Court has stated that it is the "husband-and-wife-like relationship which bears the rational relationship to the need for support, not the absence or presence of sexual intercourse." *In re Marriage of Sappington*, 106 Ill. 2d 456, 467 (1985). However, again, we note that the trial court found Pam credible. She testified that she allowed David to believe that she had sex with Patton on the night she stayed at the motel but later confirmed she has not had relations with him. David and Wendy testified that Pam admitted to having sex with Patton. The trial court found Pam's testimony credible and David and Wendy's testimony not credible. As in *Snow*, we defer to the trial court's finding that Pam's testimony regarding her sexual relationship with Patton was credible. See *Snow*, 322 Ill. App. 3d at 956.

¶ 42 David also cites *In re Marriage of Klein*, 231 Ill. App. 3d 901 (1992), arguing that because Pam conceded that she was cohabiting with Patton, she should be denied maintenance.

¶ 43 In *Klein*, the recipient spouse's counsel conceded that she was cohabiting. *Id.* at 906. Thus, neither the trial court nor the appellate court had to evaluate whether the

relationship amounted to cohabiting that justified denying her maintenance; the concession was sufficient. *Id.*

¶ 44 Again, we find David's cited case distinguishable. Here, Pam's counsel did not concede that she was cohabiting. Pam, a lay person, stated that she was living with Patton but had difficulty responding to the question about cohabitation. She eventually answered that she was, but later testimony made it clear that they were not in a committed romantic relationship. Additionally, the trial court clarified at the hearing on the motion to reconsider that Pam was "badgered" into her answer and that there was "probably a 60-second pause in the proceedings before she made that answer." Again, we defer to the trial court's witness credibility determinations in this matter and conclude that Pam's statement was not a concession that she was cohabiting on a resident, continuing, and conjugal basis.

¶ 45 We turn to the six-factor analysis that aids in our view of the totality of the circumstances in this case.

¶ 46 Regarding the first factor, the length of the relationship, Pam testified that she has been living with Patton for 15 months. Significantly, however, Pam denied that she and Patton were in an intimate relationship. She stated that, even though she had referred to him as her "boyfriend" and allowed David to believe that they slept together after the night in the motel, she and Patton were "friends" with "no commitments" who did not sleep in the same bed. She was not wearing an engagement ring and had no plans to marry Patton.

¶ 47 To rebut this testimony, David testified that Pam admitted to sleeping with Patton to him. On cross-examination, Pam admitted that Patton took her to a birthday breakfast and gave her a rose, and that she had referred to him as her "boyfriend." David also called their daughter, Wendy, to testify. She stated that Pam told her that she slept with Patton and that she had witnessed them kissing and holding hands. However, the trial court did not find either David or Wendy's testimony credible. Therefore, this factor does not support a finding of a *de facto* husband-wife relationship.

¶ 48 The second factor, the amount of time that Pam and Patton spent together, holds relatively little weight due to David's actions. See *Sunday*, 354 Ill. App. 3d at 190-91 (appellate court concluded that the amount of time that recipient-spouse and male roommate spent together was to be given little weight in determining the existence of a cohabiting relationship because it was due to petitioner-spouse's harassment and intimidation).

¶ 49 Pam admitted that she spent a lot of time with Patton. However, Pam presented credible evidence that she did so because David was threatening her with violence. When she went to Nancy's house, David threatened to return to Nancy's house with a gun. He sent text messages calling her derogatory names and threatening to kill her. He twice violated the no contact order. He admitted in court that he had hit her before out of anger. Pam testified that she took Patton up on his offer because she did not want to put Nancy's family in the middle of a potentially dangerous situation.

¶ 50 Living with Patton, of course, increased the amount of time that Pam spent with him. However, Pam lived in the camper with Patton because she feared David. As such,

David's actions "have caused this factor to appear artificially inflated." See *id.* Moreover, Pam testified that Patton goes to DeSoto frequently and that she goes to see her children and grandchildren. She estimated that she spent "90 percent" of her time alone. David did not rebut this testimony. Even when affording this factor very little weight, it still does not support a finding of a *de facto* husband-wife relationship.

¶ 51 Regarding the third factor, the nature of activities engaged in, Pam testified that, while they share responsibilities for cleaning the camper and buying food, they generally eat at different times and do their laundry separately. She also noted that she has never bought anything for the camper. This testimony supports her assertion that she lives with Patton to feel safe from David and not to engage in a committed relationship with Patton. No evidence was presented indicating that Pam and Patton participated in any kind of dating activities. Therefore, this factor weighs against a finding of a *de facto* husband-wife relationship.

¶ 52 The fourth factor, the interrelation of personal affairs, also weighs against a finding of a *de facto* husband-wife relationship. Pam testified that Patton allows her to live in the camper rent-free, and she uses her limited income of \$418 per month to pay for her personal living expenses. The money that Patton provided her before her lump-sum disability payment was disbursed was given as a loan, and Pam testified that she paid him back. Patton did not lend Pam any more money after she began receiving her checks. Neither one is the other's retirement or will beneficiary, and they do not share title on any vehicles. In short, no evidence suggests that Pam and Patton have a mutual commitment to function economically in a marriage-like way.

¶ 53 At first glance, the fifth factor, whether they vacation together, appears to support a finding of a *de facto* marriage. However, we conclude that this factor also holds very little weight due to Pam's testimony regarding David's threatening behavior. See *Sunday*, 354 Ill. App. 3d at 190-91. Pam testified that she went with Patton to a motel on the night she left David. She also accompanied Patton to Michigan, Tennessee, and Indiana. However, she also testified that she accompanied Patton on these trips because she did not want to stay in the camper by herself for fear that David would attempt to contact her in person. She also noted that separate sleeping arrangements were always provided for her on these trips. While this factor weighs in favor of finding a *de facto* marriage, we lend it very little weight due to Pam's credible fear of David's behavior.

¶ 54 The sixth factor is whether they spent holidays together. Pam testified that she spent one holiday, the Fourth of July in 2016, with Patton. The record is unclear whether Patton was present for part of the Thanksgiving holiday that she spent with friends. Regardless, every other holiday during the 15-month period was spent apart from him. David did not rebut this testimony. This factor does not weigh in support of finding a *de facto* marriage.

¶ 55 The trial court found that Pam's testimony was credible. Her testimony reflects that there was no deep level of commitment, intended permanence, or financial or material partnership in this case. See *Miller*, 2015 IL App (2d) 140530, ¶ 61. As such, we conclude that the trial court's determination that Pam was not engaging in a resident, continuing, conjugal relationship with Patton in violation of section 510(c) of the Act (750 ILCS 5/510(c) (West 2016)), and was therefore entitled to maintenance under

section 504(a) of the Act (*id.* § 504(a)), was not against the manifest weight of the evidence.

¶ 56 For the foregoing reasons, the trial court's award of maintenance is affirmed.

¶ 57 Affirmed.