

2011 IL App (2d) 101320-U
No. 2-10-1320
Order filed September 22, 2011

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
STEVEN DELHEIMER,)	of Winnebago County.
)	
Petitioner-Appellant,)	
)	
and)	No. 02-D-618
)	
CAROL DELHEIMER,)	Honorable
)	Joseph J. Bruce,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

Held: The trial court properly dismissed petitioner's petition to terminate maintenance on the ground of changes in the parties' financial conditions, as the marital settlement agreement incorporated into the dissolution judgment stated that maintenance could be modified only if petitioner could no longer practice as a surgeon and that it would be terminated only upon the death of one of the parties.

¶ 1 In December 2003, the marriage of petitioner, Steven Delheimer, and respondent, Carol Delheimer, was dissolved. Incorporated into the order dissolving the marriage was the parties' marital settlement agreement (agreement). According to the agreement, Carol was to receive 120 months of maintenance. Carol's maintenance could be modified only if Steven could no longer

work as a surgeon in his usual and customary way. Nothing in the agreement indicated when, if at all, maintenance could be terminated. The judgment dissolving the marriage provided that maintenance would be terminated only if Carol or Steven died. In March 2010, Steven petitioned to terminate maintenance, arguing that he made less than he did when the marriage was dissolved and that Carol had assets sufficient to support herself. Carol moved to dismiss, claiming that Steven failed to allege facts warranting a change in maintenance as provided in the agreement. The trial court granted Carol's motion to dismiss, and this timely appeal followed. We affirm.

¶ 2 The facts relevant to resolving this appeal are as follows. The agreement into which the parties entered provided, in relevant part, that:

“[Steven] is to pay [Carol] maintenance at a rate of \$12,500.00 per month for a period of one hundred twenty (120) months beginning on the first of the month following the entry of the Judgment for Dissolution of Marriage, said maintenance shall be non-modifiable pursuant to [750] ILCS 5/502 [(West 2002)]. That [Steven] shall be allowed to file a Petition to Modify Maintenance only if he is unable to practice his usual and customary occupation as a surgeon.”

¶ 3 A later portion of the agreement, which was entitled “NON-MODIFIABILITY OF TERMS” provided, *in toto*, that:

“[Steven and Carol] agree and the Judgment shall provide that the terms hereof shall be non-modifiable pursuant to 750 ILCS 5/502(f) [(West 2002)].”

Nowhere in the agreement did the parties indicate how, if at all, maintenance could be terminated.

¶ 4 In the judgment dissolving the marriage, the court found that the terms of the written agreement were fair, not unconscionable, and in the best interests of the parties. The court also

adopted and incorporated the terms of the agreement in the dissolution order and delineated how maintenance could be terminated. That is, the dissolution order provided:

“That the terms of the *** Agreement are clarified with regard to the provisions *** regarding maintenance. Specifically, that [Steven’s] obligation to pay maintenance to [Carol] shall terminate upon the death of either party. Specifically, however, [Steven] shall continue to pay maintenance in the event [Carol] remarries or cohabitates with another person.”

¶ 5 Over six years after the parties’ marriage was dissolved, Steven petitioned to terminate maintenance. Steven claimed that:

“2. Since entry of the Order [dissolving the marriage], there has been a substantial change in circumstances of the parties as follows:

a. [Steven] earns significantly less income than he did at the time of the entry of the Judgment for Dissolution of Marriage.

b. [Carol] has accumulated assets sufficient so that she is able to support herself without regard to and without need for maintenance from [Steven].

3. Pursuant to 750 ILCS 5/510(a-5) [(West 2010)], [Steven’s] obligation to pay maintenance should be terminated.”

¶ 6 Carol moved to dismiss (735 ILCS 5/2-615 (West 2010)), claiming, among other things, that, under the terms of the agreement, Steven could not seek to terminate maintenance based on the allegations that he earned less now than he did when the dissolution judgment was entered and that she had assets sufficient to support herself. That is, the agreement did not allow for a change in maintenance based on such claims. In response, Steven contended that, although the agreement did not permit him to seek to modify maintenance based on such claims, the agreement did not preclude

him from seeking to terminate maintenance on those grounds.

¶ 7 The trial court granted Carol's motion to dismiss. The court found that the clear and precise language of the agreement precluded modification of maintenance on those grounds and that termination is merely a modification to "the nth degree." Steven moved to reconsider, the trial court denied the motion, and this timely appeal followed.

¶ 8 At issue in this appeal is whether Steven could seek to terminate maintenance based on claims that he earned less than he did when the marriage was dissolved and that Carol had assets sufficient to support herself. Resolving that issue requires this court to interpret the parties' agreement.¹ We review *de novo* the interpretation of an agreement. *In re Marriage of Dundas*, 355

¹In making their arguments before this court, both parties address the fact that, after the agreement was entered into, the legislature added section 510(a-5) to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a-5) (West 2004)). Section 510(a-5) of the Act delineates circumstances under which an award of maintenance may be modified or terminated. Sections 510(a-5)(7) and (a-5)(8) provide that maintenance may be modified or terminated if the spouse paying maintenance suffers a decrease in income or if the spouse receiving maintenance has assets sufficient to support himself or herself. 750 ILCS 5/510(a-5)(7), (a-5)(8) (West 2004). We find this change in the status of the law completely irrelevant in resolving the issue raised here. Resolution of this appeal is governed by the agreement, not the Act. See 750 ILCS 5/502(f) (West 2002) (except for terms concerning the support, custody, or visitation of the parties' children, the parties may, with their agreement, limit the modification of the terms in the agreement); *In re Marriage of Scott*, 205 Ill. App. 3d 561, 564 (1990) (when terms of agreement dictate how maintenance may be modified, those terms control over the statutory provisions governing the

Ill. App. 3d 423, 426 (2005).

¶ 9 Interpreting an agreement involves principles of contract construction. *Id.* at 425. Courts must give effect to the parties' intent, which is best determined by examining the language used in the parties' agreement. *Id.* at 426. When the language used in the agreement is unambiguous, the agreement's terms must be given their plain and ordinary meaning. *Id.*

¶ 10 Here, the clear and unambiguous language of the agreement's maintenance terms provides that Carol shall receive monthly maintenance of \$12,500 for a period of 120 months. That portion of the agreement also provides that Steven could seek to modify maintenance only if one condition was met. That is, Steven could seek to modify maintenance only if he could no longer work as a surgeon in his field. According to the portion of the agreement that prohibits the modification of the agreement's terms, Steven and Carol agreed that the terms of the maintenance award could not be modified in any other way. When parties enter into an agreement, courts, in construing the parties' intent, must consider the agreement as a whole, and we must presume that the parties inserted each provision deliberately and for a particular purpose. *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 760 (2000). Thus, we presume that, when Carol and Steven agreed that the terms of Carol's maintenance award could not be modified in any other way, such as if Steven earned less and Carol could support herself, they meant just that.

¶ 11 Steven argues that, even though the agreement prohibited him from seeking to modify the terms of Carol's maintenance award based on a claim that he earned less and Carol had enough assets to support herself, nothing either in the agreement's maintenance provision or elsewhere in

modification or termination of maintenance); *In re Marriage of McFarlane*, 160 Ill. App. 3d 721, 725-26 (1987) (same).

the agreement does it indicate that he was precluded from seeking to terminate maintenance. Thus, because the agreement does not address termination of maintenance, Steven claims that he rightfully sought to terminate maintenance. We disagree.

¶ 12 “It is the court's function to interpret the agreement in a reasonable manner.” *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992). In doing so, we cannot read into an agreement terms that the parties could have added but did not. See *In re Estate of Zenkus*, 346 Ill. App. 3d 741, 743 (2004). If, as Steven urges, he could seek to terminate maintenance based on a decrease in his income or an increase in Carol’s assets, we would have to read into the agreement such a provision, as nothing in the agreement even remotely indicates that maintenance could be terminated under any circumstance. Indeed, recognizing that the agreement did not provide conditions under which maintenance could be terminated, the trial court clarified in the dissolution judgment that Steven’s obligation to pay Carol maintenance would terminate only if either Steven or Carol died. Nothing in the record before this court indicates that Steven ever objected to this clarification. Given that clarification, Steven’s claim that he earned less and Carol could support herself was not a proper basis to terminate maintenance.

¶ 13 That said, even if we assume that the failure to provide in the agreement when, if at all, maintenance could be terminated means either that maintenance may not be terminated or that maintenance may be terminated, we cannot accept Steven’s claim that he rightfully sought to terminate maintenance. “ ‘[T]o the extent that a contract is susceptible of two interpretations, one of which makes it fair, customary, and such as prudent persons would naturally execute, while the other makes it inequitable, unusual, or such as reasonable persons would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred.’ ” *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922-23 (1998) (quoting *Foxfield Realty, Inc. v. Kubala*,

287 Ill. App. 3d 519, 524 (1997)). It would be absurd to think that, pursuant to Steven's view, he could terminate maintenance on the basis that he earned less and Carol had enough assets to support herself, but he could not, pursuant to the agreement's explicit terms, seek to modify maintenance on those very same grounds.

¶ 14 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 15 Affirmed.