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No. 3--10--0233

Order filed April 12, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
JAMES T. FLYNN,)	Peoria County, Illinois
)	
Petitioner-Appellee,)	
)	
and)	No. 08--D--229
)	
MICHELLE E. FLYNN,)	
)	Honorable David J. Dubicki,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

Held: The proper interpretation of the joint parenting agreement does not require a showing of a significant change in circumstances prior to an initial establishment of child support.

Michelle Flynn appeals the trial court's order denying

her motion to modify child support. Michelle argues that the terms of a joint parenting agreement, incorporated into the judgment of dissolution, did not require her to show a significant change of circumstances. She also argues that in any case she did show a significant change in circumstances. The trial court interpreted the agreement to require a showing of a significant change in circumstances. It further found she failed to make such a showing and denied her motion to modify. We disagree with the trial court's interpretation of the agreement and reverse. We hold that the proper interpretation of the joint parenting agreement is that the issue of support was reserved by the court. The cause is remanded for further proceedings consistent with this order.

FACTS

James and Michelle were married in May 1995. They have five children. Two of the children have cystic fibrosis. James filed a motion for dissolution of marriage in April 2008. He was represented by counsel. Michelle appeared *pro se*. The court's judgment of dissolution incorporated a

settlement agreement and joint parenting agreement presented by the parties. According to the terms of the agreements, both parties waived current or future maintenance payments. They also agreed to have joint custody of their five children. The only mention of child support in the judgment is found in the joint parenting agreement. It states, "[i]t is the intentions [sic] of the parities [sic] to contribute to the financial support [sic] the children and neither party shall be order [sic] at this time to pay a set amount of child support." The settlement agreement stated that both parties were employed when the marriage was dissolved.

In September 2009, Michelle filed a petition asking the court to modify child support.¹ The court held a hearing on the petition in February 2010. At the hearing, Michelle argued that the joint parenting agreement allowed the court to set child support without a showing of a substantial

¹The petition was titled: "Petition to Modify." Our analysis shows that her petition was actually a motion to set child support and that is how we refer to it in the rest of this order.

change in the circumstances. She also argued that even if the court required, she could show that a significant change in circumstances had occurred.

The record shows that in 2007 James earned \$57,618 and Michelle earned \$2,935. In 2008 James earned \$66,630 and Michelle earned \$15,530. In 2009, the year Michelle filed her petition, James earned \$66,087 and Michelle \$17,667.

Michelle's argument that a significant change in circumstances had occurred was that James was laid off at the time the court granted the petition for dissolution. Later, at the time of the hearing, he was employed. This showed a significant change of circumstances. James argued that he was in reality employed at the time of dissolution. He testified that he had taken a voluntary layoff of a few weeks at the time of the divorce. He did this so that he could be with his children as they were coping with the divorce. He claims that he was employed within weeks of the dissolution of the marriage. He also pointed out that if anything, his yearly income is lower since the divorce.

The court held that Michelle was required to show a

significant change in circumstances. It found that she had failed to make such a showing. The court said that it looked more broadly at James's work history than on a specific day to determine if he was employed at the time of the divorce. Michelle now appeals the court's denial of her motion to set child support.

ANALYSIS

Michelle makes two arguments on appeal. First, that the proper interpretation of the judgment of dissolution does not require her to show a substantial change in circumstances. Second, even if she was required to show a substantial change in circumstances, she did. We find her first argument to be determinative in this case and do not address the second.

We interpret agreements incorporated in judgments of dissolution in the same manner as any contract. *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 305 (2002). "The construction of a contract is a question of law, which we review *de novo*." *Id.* Our task is to give effect to the intentions of the parties. *Gallagher v. Lenart*, 226 Ill. 2d

208, 232 (2007). We look first to the plain language of the agreement. *Id.* at 233. We presume that each provision of the contract was included for a reason. *Turrell*, 335 Ill App. 3d at 305. If the language of the contract is ambiguous we may consider extrinsic evidence to determine the parties intent. *Gallagher*, 226 Ill. 2d at 233.

The language at question in this case is: "[i]t is the intention [sic] of the parities [sic] to contribute to the financial support [sic] the children and neither party shall be order [sic] at this time to pay a set amount of child support." This language makes clear that at the time the agreement was entered into neither party was ordered to pay child support. Nothing in this language implies that neither party would ever be ordered to pay child support. In fact, the language "at this time" implies that at some other time either party might be ordered to pay child support.

The language of the agreement recognizes that either party may be ordered to pay child support at some time. However, there is simply nothing in the agreement that

addresses whether a party seeking child support is required to show a significant change of circumstances. This is not an ambiguity in the contract that requires us to look to extrinsic evidence. It is evidence that the parties placed no restrictions on a future order of child support.

Any other finding would lead to absurd results. If we were to find the language of the agreement to be ambiguous concerning the need to show a significant change in circumstances because it did not include a standard, any contract would be subject to a finding of ambiguity about issues not contained therein. For example, this agreement does not require that future requests for child support be made on Thursdays. That does not make it an ambiguous issue for this court to read into the agreement. It means it simply is not part of the agreement.

Even if we were to find the parties' intent cannot be determined from the plain language, allowing us to look at extrinsic evidence, that would not change the outcome of this case. In reality, this is more than just a contract. It is a contract that forms part of the trial court's

judgment of dissolution. We assume that the court, and parties, intended for the judgment of dissolution to be valid. In order for the judgment to be valid, it must be an action the court was authorized to perform. We note that "[a] void order or judgment is one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved." *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994).

The legislature has limited the court's ability to enter a judgment of dissolution. The Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/101 *et seq.* (West 2008), says that a dissolution "[j]udgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for *** the support of any child of the marriage entitled to support ***." We believe the court intended the joint parenting agreement to reserve the issue of child support.

The record contains no indication that the court

considered, discussed or addressed child support in any way other than incorporating the poorly written phrase from the joint parenting agreement cited above. The trial court was, as we are, to ensure provisions "that seek to provide support to children receive the special care and consideration of the courts." *In re Marriage of Moriarty*, 132 Ill. App. 3d 895, 898 (1985); accord *Rimkus v. Rimkus*, 199 Ill. App. 3d 903, 906 (1990). We cannot construe the sentence at issue as evidence that the court properly considered, approved or made provision for the five children of this marriage. The court merely reserved the issue of child support for a later date. Therefore, Michelle was not required to show a significant change in circumstances.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and the cause is remanded for further proceedings.

Reversed and remanded.

