NOTICE
Decision filed 10/03/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 100500-U

NO. 5-10-0500

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
PAMELA L. MASCHING,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 08-D-1258
	)	
	)	
PATRICK A. MASCHING, M.D.,	)	Honorable
	)	Stephen A. Stobbs,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Chapman and Justice Welch concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court rightfully granted the petitioner's motion to dismiss the respondent's petition to terminate maintenance.

¶ 2 In the circuit court of Madison County, the respondent, Patrick A. Masching, M.D., filed a petition to terminate maintenance. In response, the petitioner, Pamela L. Masching, filed a motion to dismiss the petition to terminate. The circuit court granted the petitioner's motion to dismiss, and for the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The petitioner and the respondent were married in February 1994. In December 2008, citing irreconcilable differences, the petitioner filed a petition for dissolution of marriage. In January 2009, the circuit court entered a judgment of dissolution of marriage, which was signed by both parties. Pursuant to the maintenance clauses of the judgment, the respondent

agreed to pay the petitioner "the sum of $9,000.00 per month as and for non-modifiable maintenance for the period of January 5, 2009 through August 5, 2016," "the sum of $11,000.00 per month beginning September 5, 2016 through September 5, 2020," and "the sum of $12,000.00 per month beginning October 5, 2020 and continuing until December 5, 2028." The judgment further stated: "[T]he above mentioned maintenance cannot be extended beyond the months set forth above, nor can it be terminated prior to the completion of the payments as set forth above for any reason. The amount of maintenance cannot be increased nor decreased."

¶ 5 In May 2009, alleging that the petitioner was "currently cohabiting on a continuing, conjugal basis with her partner," the respondent filed a petition to terminate maintenance. In February 2010, citing the judgment of dissolution's nontermination clause, the petitioner filed a motion to dismiss the respondent's petition to terminate maintenance. In May 2010, following a hearing, the circuit court entered a written order granting the petitioner's motion to dismiss the respondent's petition to terminate maintenance. The court held that the clear terms of the judgment of dissolution of marriage unambiguously expressed the parties' intent that the agreed-upon maintenance would be nonmodifiable and nonterminable. The present appeal followed.

¶ 6 DISCUSSION

¶ 7 Arguing that the judgment of dissolution of marriage did not contain a "clear agreement" that maintenance would not be "terminated for cohabitation," the respondent contends that the circuit court erred in granting the petitioner's motion to dismiss his petition to terminate maintenance. We disagree.

¶ 8 "An appellate court reviews *de novo* a trial court's grant or denial of a motion to dismiss." *K.D. v. Villa Grove Community Unit School District No. 302 Board of Education*, 403 Ill. App. 3d 1062, 1070 (2010). "Whether the judgment of dissolution reflected the

actual intent of the parties is a question of contract and is also reviewed *de novo*." *In re Marriage of Allen*, 343 Ill. App. 3d 410, 413 (2003).

¶ 9 Section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(c) (West 2008)) provides as follows:

> "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."

¶ 10 "It is clear that parties may agree that maintenance shall not be modified or terminated except upon certain specified conditions." *In re Marriage of Schweitzer*, 289 Ill. App. 3d 425, 428 (1997). "When the parties so agree, maintenance may be modified or terminated only under the circumstances specified in the agreement." *Id.* "The intent of the parties to preclude or limit modification of maintenance must be clearly manifested in their agreement." *Id.*

¶ 11 "Illinois law is clear that rules of contract construction apply to the interpretation of provisions in a dissolution judgment." *In re Marriage of Sawyer*, 264 Ill. App. 3d 839, 846 (1994). "A court must construe the provisions of settlement agreements incorporated by dissolution judgments to give effect to the intention of the parties, and where the terms are unambiguous, the parties' intent must be determined solely from the language of the instrument itself." *Id.* "The parties' intent must be determined from the instrument as a whole, and it is presumed that the parties inserted each provision deliberately and for a purpose." *Id.* "The court cannot place a construction on the instrument that is contrary to or different from the plain and obvious meaning of the language used." *Id.* "Parties are bound to the contracts they make, and the court has a duty to construe and enforce them." *J.B.*

Esker & Sons, Inc. v. Cle-Pa's Partnership, 325 Ill. App. 3d 276, 284 (2001).

¶ 12 Here, the judgment of dissolution plainly states that the "non-modifiable" maintenance that the respondent agreed to pay the petitioner would be paid in specific increments and would not be terminated "prior to the completion of the payments *** for any reason." We agree with the circuit court's assessment that the plain language of the judgment of dissolution of marriage unambiguously expressed the parties' intent that the agreed-upon maintenance would be nonterminable. See *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 708, 712-13 (2005). "In construing a contract, the cardinal rule is to give effect to the intention of the parties, which is discerned from the plain and ordinary meaning of the language used in the contract." *Sklodowski v. Countrywide Home Loans, Inc.*, 358 Ill. App. 3d 696, 700 (2005). The phrase "for any reason" necessarily includes those reasons set forth in section 510(c), and to conclude otherwise we would have to ignore the obvious meaning of the language used in the parties' judgment of dissolution of marriage. We also agree with the petitioner's suggestion that the judgment's maintenance clauses are consistent with those of a structured settlement for maintenance in gross. *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985) (defining maintenance in gross as "a non-modifiable sum certain to be received by the former spouse regardless of changes in circumstances").

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, we affirm the circuit court's judgment granting the petitioner's motion to dismiss the respondent's petition to terminate maintenance.

¶ 15 Affirmed.