

follows:

"D. That the Petitioner shall change the beneficiary of the life insurance policy on his life, in the amount of \$100,000.00, by making the Respondent the sole beneficiary of said policy, until the Petitioner has paid all maintenance in full to the Respondent, as hereinafter set forth. Upon said maintenance being paid in full, Petitioner may change the beneficiary of said policy at his discretion.

E. That the Petitioner's military pension shall be divided between the Petitioner and the Respondent on the basis of the formula allowed by the military, but in no event shall the amount received by the Respondent be less than \$396.53 per month as shown by the evidence herein.

* * *

I. That the Petitioner shall pay maintenance to the Respondent for 4 years from the date of the entry of the Judgment herein. He shall pay the difference between \$800.00 and the amount the Respondent receives from the Petitioner's military pension each month. The intent of this provision is that Respondent shall receive a total of \$800.00 each month for four years, by adding the amount paid by Petitioner to the amount received by Respondent from Petitioner's military pension."

¶ 4 On February 19, 2008, the petitioner filed a petition to terminate maintenance, alleging that the respondent had remarried. He argued that pursuant to section 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510 (West 2008)), his obligation to pay maintenance ceased when the respondent remarried. The respondent filed a response, arguing that the award of maintenance was in gross and not modifiable or terminable because the court had ordered the petitioner to pay a "definite amount of money" for a "definite length of time." She admitted that she had remarried but denied that her remarriage was relevant to the issues before the court.

¶ 5 The parties submitted written arguments to the court, and the court entered a docket sheet order on September 29, 2009. In that order, the court found that the maintenance award, entered by a different circuit court judge who had retired, was "maintenance in gross" and not terminable by the respondent's remarriage. The court noted that, when it considered the provision regarding life insurance in conjunction with the provision awarding a specified amount of maintenance for four years, it was clear that the judge who entered the judgment of dissolution "ordered maintenance in the sum of \$800.00 total per month (after deducting pension amount) to be paid in full for four years." The court determined that the language of these provisions "vested the entire amount of maintenance" such that the respondent's remarriage did not terminate her award of maintenance. Accordingly, the trial court denied the petition to terminate maintenance.

¶ 6 On October 26, 2009, the petitioner filed a motion to reconsider. On January 20, 2010, the court entered an order denying the petitioner's motion to reconsider. The petitioner filed a timely notice of appeal.

¶ 7 ANALYSIS

¶ 8 On appeal, the petitioner argues that the trial court erred by denying his petition to terminate maintenance. He contends that the maintenance provisions in the judgment do not specify that maintenance may not be modified or terminated but only that the respondent was entitled to receive four years of maintenance. The petitioner submits that the respondent was entitled to the full four years of maintenance only if no substantial change in circumstances occurred and no event occurred resulting in termination of maintenance. Since the respondent's remarriage is a terminating event, the petitioner argues that the court erred by refusing his request to terminate maintenance. We agree.

¶ 9 The issue presented in this case involves interpreting the maintenance provisions of the judgment of dissolution in light of the applicable provisions in the Act. Therefore, the

issue is a question of law, and our review is *de novo*. *In re Marriage of Elenewski*, 357 Ill. App. 3d 504, 506 (2005).

¶ 10 The Act provides that in dissolution proceedings, "the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time." 750 ILCS 5/504(a) (West 2006). The respondent argues that the maintenance award is in gross because it is for a fixed duration and for a fixed amount. Unless there is something else in the maintenance award to indicate that it is not terminable or modifiable, she is incorrect. "Since the statute is phrased in the disjunctive, it is clear that payments for a fixed period of time are not synonymous with maintenance in gross since the Act expressly permits a maintenance award for a fixed period of time which is not maintenance in gross." *In re Marriage of Harris*, 284 Ill. App. 3d 389, 390 (1996). In *In re Marriage of Harris*, the court held that a provision under which maintenance was to be paid for 10 years at the rate of \$606 per month without any language to indicate that it was not modifiable or terminable did not constitute maintenance in gross, but it was periodic maintenance that should have been terminated as a result of the receiving party cohabiting with another on a resident, continuing conjugal basis. *In re Marriage of Harris*, 284 Ill. App. 3d at 390.

¶ 11 Modification or termination of maintenance awards is governed by section 510 of the Act, which provides, in relevant part, as follows:

"(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. ***

(c) 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." 750 ILCS 5/510(a-5), (c) (West 2008).

¶ 12 The parties in this case did not have a written agreement about maintenance, so we are confined to the terms of the judgment of dissolution. The maintenance provisions in the judgment do not prohibit modification or termination of maintenance upon the respondent's remarriage. The phrase "maintenance in gross" refers to "a non-modifiable sum certain to be received by the former spouse regardless of changes in circumstances." *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985). There are no terms in the judgment of dissolution to indicate or even suggest that the maintenance award is nonmodifiable or nonterminable. Moreover, the trial court incorrectly found that the life insurance provision proved that maintenance was in gross. That the court chose to secure the maintenance payments in this manner does not indicate that the maintenance award is nonmodifiable or for a sum certain. Therefore, the maintenance award is not in gross, and it was subject to termination when the respondent remarried. 750 ILCS 5/510(c) (West 2008).

¶ 13 **CONCLUSION**

¶ 14 For all the reasons stated, we reverse the trial court's order denying the petitioner's petition to modify and remand for further proceeding consistent with this order.

¶ 15 Reversed and remanded.