

No. 1-11-0198

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
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF GINA M. PINTOZZI-GOREY,)	Appeal from the
)	Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	No. 03 D 10579
v.)	
)	
DANIEL GOREY,)	Honorable
)	Barbara M. Meyer,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Former husband's severance pay does not constitute "Additional Income" under a marital settlement agreement. As a result, former wife is not entitled to a 16% share of the severance pay.

¶ 2 This case arose from a divorce between the parties to this appeal, Gina M. Pintozzi-Gorey and Daniel Gorey. Daniel contests the trial court's determination that his severance pay is "Additional Income" under the Marital Settlement Agreement and is therefore subject to a 16% share by Gina. For the reasons discussed below, we reverse.

¶ 3 BACKGROUND

¶ 4 In 2003, Gina filed a Petition for Dissolution of Marriage, seeking a divorce from Daniel, as well as maintenance, child support, and child custody. In 2006, the parties entered into the Marital Settlement Agreement ("MSA"), which disposed of all issues raised in Gina's petition. Article III requires Daniel to make regular maintenance payments of a specific dollar amount to Gina. In addition, Gina is entitled to "16% of the gross Additional Income" received by Daniel. Article III(1) defines "Additional Income":

"Additional Income" shall include all bonuses, stock grants and awards, exercisable stock options and the like that are paid, or in the case of stock options, issued and exercisable on or before the date of any Termination Event as defined hereafter."

Article III(2)(b) instructs the parties as to how to distribute each category of "Additional Income" and breaks the categories down into separate sub-paragraphs: "Cash Bonus," "Stock Grant/Award," "Stock Options," and "All Other Additional Income."

¶ 5 Article III(1) also specifically excludes certain income from "Additional Income":

"Husband's passive income, Board fees from American Roller * * * and Husband's base salary (which includes a small Christmas bonus (\$1,500 to \$3,000) and sick pay bonus (approximately \$5,000), automobile expenses or reimbursements, business travel or entertainment expense reimbursements or the proceeds or income earned from any asset previously divided in the Judgment for Dissolution of Marriage entered between the parties."

¶ 6 At the time that the parties signed the MSA, Daniel was employed as Chief Financial Officer

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for a publicly traded company. In 2008, he made two agreements with his company: the Amended and Restated Change of Control Agreement ("Change of Control Agreement") and the Severance and Non-Competition Agreement. These agreements provided for benefits to Daniel in the event of a change of control of the company or termination of his employment. They were similar to previous agreements he had with his company that were in effect at the time of the divorce and which Daniel had shared and discussed with Gina during the divorce process. Under the Change of Control Agreement, Daniel was entitled to receive a "Separation Benefit," in cash, "[i]n lieu of any further salary payment" that would be equal to three times his base salary.

¶ 7 In 2010, after the company had accepted a tender offer from a competitor, the company terminated Daniel's employment. Pursuant to his employment agreements, Daniel received a severance payment of \$1,672,685.00. Although Article III(6) of the MSA lists several possible "termination events" that would have ended Daniel's maintenance obligations, the end of Daniel's employment with his company was not listed as a termination event.

¶ 8 Gina then filed a Petition for Distribution of Additional Income, seeking a 16% share of Daniel's severance pay. Gina filed a Motion for Summary Judgment. Finding that the MSA was "clear and unambiguous" and that the severance pay "is additional income pursuant to the parties' marital settlement agreement," the trial judge granted summary judgment to Gina and ordered Daniel to pay her a 16% share of his severance pay: \$267,629.60. Daniel filed this timely appeal.

¶ 9 ANALYSIS

¶ 10 We review rulings on motions for summary judgment *de novo*. *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993) (citing *Outboard Marine Corp. v. Liberty Mutual*

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Insurance Co., 154 Ill. 2d 90, 102 (1992)).

¶ 11 Contractual interpretation is also a question of law that is reviewed *de novo*. *Salce v. Saracco*, 409 Ill. App. 3d 977, 981 (2011) (citing *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007)).

"A marital settlement agreement is a contract subject to the same rules of construction as any other contract." *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992). The "cardinal rule" of contract interpretation is "to give effect to the parties' intent, which is to be discerned from the contract language." *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007) (citing *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004)).

Unambiguous contract language "should be given its plain and ordinary meaning." *Virginia Surety*, 224 Ill. 2d at 556 (citing *Central Illinois Light Co.*, 213 Ill. 2d at 153). There also exists "a strong presumption against including provisions that easily could have been included in the contract but were not." *Wright v. Chicago Title Insurance Co.*, 196 Ill. App. 3d 920, 925 (1990) (citing *Braeside Realty Trust v. Cimino*, 133 Ill. App. 3d 1009, 1011 (1985); *Ebrahim v. Checker Taxi Co.*, 128 Ill. App. 3d 906, 908 (1984)).

¶ 12 The parties do not argue that the MSA's terms are ambiguous; instead, the parties cannot agree on an interpretation of "Additional Income." Both parties focus on the qualifier, "and the like," which appears in the definition of "Additional Income." Daniel argues that his severance pay does not qualify as "Additional Income" under the MSA because "and the like" modifies only "exercisable stock options," which are not similar to his severance pay. Daniel also notes that he had disclosed his employment agreements during the divorce proceedings and the parties could have included his severance pay in the MSA's definition of "Additional Income" but did not. Gina

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contends that the MSA's definition of "Additional Income" is not exclusive and that the severance pay is "Additional Income" under the phrase "and the like," which she claims modifies all three forms of income specifically enumerated in the definition of "Additional Income." Gina argues that severance pay is similar to a bonus or award from Daniel's company and is therefore "Additional Income" subject to a 16% share to Gina.

¶ 13 First, we reject the argument that the severance pay is "Additional Income" under the qualifier, "and the like." The MSA defines "Additional Income" as "all bonuses, stock grants and awards, exercisable stock options and the like that are paid, or in the case of stock options, earned and issued and exercisable on or before the date of any Termination Event as defined hereafter * * * ." "Exercisable stock options" is the last item on the list before the qualifier "and the like," and there is no additional phrase to indicate that the qualifier is meant to refer to all categories of "Additional Income." There is also no comma separating "exercisable stock options" and "and the like," suggesting that the two are meant to be paired together. The plain and ordinary meaning of this phrasing choice is that the qualifier is meant only to refer to the term that immediately precedes "and the like," which is "exercisable stock options."

¶ 14 To support her claim that the qualifier relates to all categories of "Additional Income," Gina claims that the MSA's instructions for distributing "Additional Income" provide further insight into the definition of the term. The definition appears in Article III(1): "all bonuses, stock grants and awards, exercisable stock options and the like * * * ." Later, Article III(2)(b) provides instructions for distributing each form of "Additional Income." This section lists each type of income, separating the terms into outline format with separate sub-sections, entitled: "Cash Bonus," "Stock

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Grant/Award," "Stock Options," and "All Other Additional Income." The subsections provide instructions for distributing each type income. Gina suggests that placing "All Other Additional Income" in its own sub-section, rather than as a subsection of "Stock Options," indicates that the parties intended the qualifier "and the like" to modify all three previously listed forms of "Additional Income." However, the only relevant definition of "Additional Income" is Article III(1); no other section of the MSA explicitly provides further definition. Article III(2)(b) does not further define "Additional Income"; it merely instructs the parties how to distribute "Additional Income" as previously defined in Article III(1). Gina's argument on this point fails.

¶ 15 The qualifier "and the like" refers only to "exercisable stock options." Neither Gina nor Daniel contend that the severance pay is similar to "exercisable stock options." The Change of Control Agreement makes clear that the form of the severance pay, or "Separation Benefit," is to be a lump sum payment to Daniel, made in cash, not stock options "paid pursuant to contracts and part of [his] compensation." The severance pay is not included as "Additional Income."

¶ 16 We note further that severance pay is not expressly included in the definition of "Additional Income." The parties had ample opportunity to include it, as severance pay was discussed in Daniel's then-existing agreements with his company, which were disclosed to Gina in the divorce proceedings. Both Daniel and Gina knew that Daniel would receive severance pay if he was terminated from his company as part of a change of control. As "[t]here is a strong presumption against provisions that easily could have been included in [a] contract but were not," we will not interpret the MSA in a way that would add an additional term - including severance pay as "Additional Income" - that the parties could have included themselves. See *Wright*, 196 Ill. App. 3d

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at 925 (citing *Braeside Realty Trust*, 133 Ill. App. 3d at 1011; *Ebrahim*, 128 Ill. App. 3d at 908).

¶ 17 For the above reasons, we conclude that the MSA's language is unambiguous and that the severance pay does not constitute "Additional Income." We therefore reverse the circuit court's determination that the severance pay was "Additional Income," as well as the award to Gina, which represents a 16% share of that severance pay.

¶ 18 CONCLUSION

¶ 19 Based on the foregoing, we reverse the judgment of the Circuit Court of Cook County.

¶ 20 Reversed.