

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).

2012 IL App (3d) 110500-U

Order filed June 12, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
RACHEL M. BREMER,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Petitioner-Appellant and)	
Cross-Appellee,)	
)	
v.)	Appeal No. 3-11-0500
)	Circuit No. 04-D-462
GARY L. BREMER (deceased),)	
LAURA MONTRBRIAND, Executor)	
of the Estate of Gary L. Bremer, deceased,)	
)	Honorable
Respondent-Appellee and)	David J. Dubicki,
Cross-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment enforcing a judgment of dissolution with respect to a deceased husband's pension was affirmed because the language of the provision in the dissolution judgment requiring the former husband to designate his former wife as his pension beneficiary for the same amount of time as his maintenance obligation clearly showed the parties' intent that the designation was to secure the payment of maintenance. Also, pursuant to the parties' agreement, the former husband's maintenance obligation did not terminate upon his death.

¶ 2 A judgment of dissolution of marriage was entered in 2006, dissolving the marriage of the petitioner, Rachel Bremer, and the respondent's deceased, Gary Bremer. As part of the judgment, Gary was ordered to pay Rachel maintenance for six years, and ordered to designate her as the beneficiary of his pension annuity fund for that same six-year period. Gary executed the beneficiary designation in favor of Rachel, and then Gary died prior to the expiration of the six years. The executor of Gary's estate filed a petition to enforce the judgment of dissolution. The circuit court ruled in favor of the estate on the designation issue, and Rachel appealed. The executor cross-appealed the circuit court's finding that Gary's maintenance obligation did not terminate upon his death.

¶ 3

FACTS

¶ 4 Rachel and Gary were divorced after 20 years of marriage. In the judgment for dissolution of marriage, the circuit court noted that the parties had entered into a property settlement agreement, and the terms of the settlement were contained in the judgment. Paragraph H of the judgment provided that Gary would pay Rachel \$1000 per month in maintenance for a period of six years, beginning in October 2006. The maintenance was nonmodifiable as to amount and duration, and the judgment specified that the maintenance would terminate after 72 months, upon the death of Rachel, or upon Rachel's remarriage or cohabitation. Paragraph I added another \$150 for insurance, payable by Gary to Rachel, in the nature of maintenance, also nonmodifiable as to amount and duration, and specifically terminating upon the same three events. Paragraph O specified the disposition of the annuity/pension that Gary had through his employment at the Burlington Northern Santa Fe Railway Company (SRB pension). Fifty

percent of the SRB pension was to be credited to Gary, plus \$27,000 from Rachel's share.

Rachel was credited with 50%, less the \$27,000. Subparagraph 3 provided:

¶ 5 “The Defendant, GARY L. BREMER, shall designate the Plaintiff, RACHEL M. BREMER, as the irrevocable beneficiary of his share of the said annuity until October 1, 2012, or until he no longer has an obligation to pay maintenance as set forth in Paragraph D above.” (Both parties agree that the reference to Paragraph D was a typographical error, because that paragraph addressed child support, and the reference should have been to Paragraph H.)

¶ 6 Paragraph O also provided that Gary could not make withdrawals from the SRB pension, except for periods of unemployment or disability, and only in the amount of \$1,150 per month to pay maintenance to Rachel.

¶ 7 Gary died on March 13, 2010, during the six years for which he owed Rachel maintenance. As required by the judgment of dissolution, Rachel was the designated beneficiary of Gary's SRB pension. The executor of Gary's estate filed a petition to enforce the judgment of dissolution, arguing that Gary's obligation to pay maintenance terminated upon his death and that the beneficiary designation was solely to secure payment of the maintenance. Rachel filed a motion to dismiss the petition to enforce, arguing that the circuit court lacked jurisdiction.

¶ 8 The circuit court denied Rachel's motion to dismiss, finding that it could enter an order that would bind the parties. It concluded that the maintenance obligation did not terminate upon Gary's death. It also concluded that the beneficiary designation required by Paragraph O of the judgment of dissolution was a provision to secure the maintenance obligation. The circuit court ordered that Rachel may retain \$20,700 as Gary's remaining maintenance obligation (\$1,150 per

month for the remaining 18 months). In clarification, upon reconsideration, the circuit court ordered that Rachel was entitled to 50% of the SRB pension, less \$27,000, in addition to the \$20,700 from Gary's share. The order assumed that Gary was current in his maintenance obligation.

¶ 9 Rachel appealed, arguing that the circuit court erred in interpreting Paragraph O of the judgment of dissolution of marriage. Gary's executor cross-appealed, arguing that the circuit court erred in holding that Gary's obligation to pay maintenance continued after his death.

¶ 10 ANALYSIS

¶ 11 Rachel argues that the circuit court did not have jurisdiction over the SRB pension and, since she was the named beneficiary, she was entitled to keep the entire annuity proceeds.

Rachel contends that paragraph O.3 of the dissolution judgment dealt with timing and was not solely intended to secure the payment of maintenance. The executor argues that the circuit court had jurisdiction to enforce the provisions of the dissolution judgment, and the rational and reasonable interpretation of paragraph O.3 was that the beneficiary designation was to secure the payment of Gary's maintenance obligation. On cross-appeal, the executor argues that Gary's maintenance obligation terminated upon his death.

¶ 12 A marital settlement agreement that has been incorporated into a judgment of dissolution is interpreted in the same manner as other contracts. *In re Marriage of Turrell*, 335 Ill. App. 3d 297 (2002). We review *de novo* the construction of a contract, which is a question of law. *In re Marriage of Turrell*, 335 Ill. App. 3d at 305.

¶ 13 Rachel argues that the SRB pension was a qualified plan under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. § 401) and governed by federal law. Thus, under federal law,

the plan had to abide by the beneficiary designation and pay the proceeds of the SRB pension to Rachel. Rachel argues that the circuit court had no authority to order the plan to pay the proceeds to anyone other than the designated beneficiary. The executor points out that it did not ask for an order against the plan, just an order against Rachel enforcing the terms of the judgment of dissolution. The circuit court concluded that it had jurisdiction over the parties in the dissolution action, and, therefore, had the authority to enter an order directed to those parties in accordance with the judgment of dissolution, without joinder of the plan or any order directed to the plan. It acknowledged that Rachel would receive the entire amount of the pension from the plan, and that Rachel was entitled to retain a portion of the annuity as her share of the property settlement (50% - \$27,000). It also ordered Rachel to retain in trust \$20,700 of the amounts received from the annuity pursuant to her beneficiary designation as security for Gary's maintenance obligation and to remit the excess to Gary's estate.

¶ 14 A circuit court retains jurisdiction to enforce the terms of its judgment of dissolution of marriage. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012 (2011). Admittedly, the circuit court lacked the authority to order the plan to pay the proceeds of the annuity to anyone except Rachel. However, the proceeds were governed by the terms of the judgment in the dissolution proceeding. The circuit court was within its authority when it entered an order against Rachel in accordance with the terms of the judgment of dissolution, to which Rachel was a party.

¶ 15 Rachel argues that Paragraph O dealt solely with the division of the SRB pension as marital property and it was in no way related to the maintenance provisions. Rachel argues that paragraph O.3 of the judgment simply established the time frame during which Gary was required to keep Rachel as the irrevocable beneficiary of his annuity. Since Gary died during that

time, Rachel was entitled to all of the proceeds of the SRB pension. Rachel argues that the circuit court erred as a matter of law in ordering her to forfeit a portion of the SRB pension to Gary's estate. The executor points out that the date that maintenance terminated was the same as the date during which Rachel had to be Gary's designated beneficiary. Thus, the executor argues that the designation was simply security for the maintenance obligation.

¶ 16 When interpreting a contract, courts attempt to give effect to the intent of the parties, and, usually, the best indication of the parties' intent is the language used in the agreement. *Allton v. Hintzsche*, 373 Ill. App. 3d 708 (2007). If the language is unambiguous, courts discern the parties' intent solely from the language of the agreement itself. *In re Allton*, 373 Ill. App. 3d at 711. Courts must discern the parties' intent from the agreement as a whole, considering the plain and obvious language and giving meaning and intent to every part of the agreement. *In re Marriage of Holderrieth*, 181 Ill. App. 3d 199 (1989).

¶ 17 In this case, the language of the judgment is unambiguous. The SRB pension was a marital asset, and the judgment controls the distribution of that asset: 50% to each party, with a \$27,000 deduction from Rachel's share. The language requiring Gary to designate Rachel as his beneficiary for exactly the same term as his maintenance obligation clearly shows the parties' intent that the designation was to secure Gary's payment of maintenance. Thus, Rachel is entitled to her share of the pension (50%-\$27,000), and the remaining maintenance obligation, as ordered by the circuit court.

¶ 18 Rachel makes the hypothetical argument that, had Gary failed to change his beneficiary designation after the expiration of the six-year maintenance period, and then he died, she would be entitled to the proceeds of the annuity as the beneficiary. While that may be true, it does not

affect the outcome of the case as it now stands. While a divorce decree does not automatically preclude a former spouse from collecting as the beneficiary of the other spouse's insurance policy proceeds, or annuity proceeds, such a right can be extinguished if specifically provided for in the marital settlement agreement. *In re Marriage of Velasquez*, 295 Ill. App. 3d 350 (1998). In this case, the judgment, adopting the parties' agreement, specifically designated the property settlement of Gary's SRB pension. Thus, since Gary died while he was required to designate Rachel as his beneficiary, it is a different result than if Gary had died later and had continued to designate Rachel as his beneficiary even when not required. In that case, Rachel is arguably correct that she would be entitled to her portion of the annuity, in addition to Gary's portion by virtue of the designation.

¶ 19 In the cross-appeal, the executor argues that Gary's maintenance obligation terminated upon his death. Rachel argues that the judgment specified the events that would terminate maintenance, and Gary's death was not one of those terminating events.

¶ 20 Section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (the Act) provides that, unless otherwise agreed to by the parties in a written agreement set forth in the judgment, the obligation to pay future maintenance terminated upon the death of either party, or the remarriage of the party receiving maintenance, or cohabitation by the party receiving maintenance. 750 ILCS 5/510(c) (West 2010). Typically, maintenance is modifiable unless the settlement agreement clearly and unambiguously expresses the parties' intent to make the maintenance non-modifiable. *In re Marriage of Tucker*, 223 Ill. App. 3d 671 (1992). Parties may agree that maintenance will nonmodifiable, or it will only be modifiable under specific conditions. See 750 ILCS 5/502(f) (2008); *In re Marriage of Brent*, 263 Ill. App. 3d 916 (1994).

Where the parties agree to the terms under which maintenance may be modified or terminated, and the terms are clear and incorporated into the judgment of dissolution, the parties' terms take precedence over those in section 510 of the Act. *In re Marriage of Brent*, 263 Ill. App. 3d at 922-23.

¶ 21 In this case, the parties' agreement specified that the maintenance was nonmodifiable as to amount and duration, and terminated in the case of three specific instances: (1) Rachel's death; (2) Rachel's remarriage; or (3) Rachel's cohabitation. By including specific instances for termination, but notably omitting the provision for termination upon Gary's death, the agreement shows that the parties clearly "otherwise agreed to" their own terms for the termination of the maintenance obligation. Those terms did not include Gary's death, so Gary's maintenance obligation did not terminate upon his death.

¶ 22 **CONCLUSION**

¶ 23 The judgment of the circuit court of Peoria County is affirmed.

¶ 24 Affirmed.