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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
ADRIANA GREISMAN,	)	of Lake County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 03-D-1387
	)	
ROBERT GREISMAN,	)	Honorable
	)	Donna-Jo Vorderstrasse,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Presiding Justice Burke and Justice Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in denying petitioner's petition for attorney fees: the parties' marital settlement agreement provided for an award of fees to the prevailing party in any postdissolution litigation, and, although respondent withdrew his petition to terminate or reduce maintenance, petitioner prevailed on the petition, as respondent withdrew it only because the court advised him that the petition would fail.

¶ 2 The marriage of petitioner, Adriana Greisman, and respondent, Robert Greisman, was dissolved in October 2005. Incorporated into the judgment dissolving the parties' marriage was their marital settlement agreement (MSA). The MSA specifically provided that respondent was required to pay petitioner maintenance from October 2005 to June 2014. The MSA also

indicated that, if either party unsuccessfully “commence[d] post-decree litigation,” that party would have to pay the prevailing party’s fees, costs, and expenses. Thereafter, the parties agreed to reduce the amount of maintenance, but made that amount nonmodifiable. The other terms in the MSA were not changed. Subsequently, respondent petitioned to terminate or reduce maintenance, and, after the court suggested that his petition would not succeed, respondent voluntarily dismissed the petition without prejudice (see 735 ILCS 5/2-1009(a) (West 2012)). Citing section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(b) (West 2012)), petitioner petitioned for attorney fees, claiming that respondent brought his petition for an improper purpose. At the hearing on that petition, petitioner noted that the MSA provided that she was entitled to attorney fees. The court denied the petition for attorney fees, and this timely appeal followed. The dispositive issue raised on appeal is whether the MSA mandated that respondent pay the attorney fees that petitioner incurred in defending against respondent’s petition to terminate or reduce maintenance. For the reasons that follow, we determine that the MSA’s explicit language requires respondent to pay petitioner’s fees. Accordingly, we reverse the court’s order denying petitioner’s petition for fees and remand this cause for a hearing on the proper amount of fees.

¶ 3 The following facts are relevant to resolving the issue raised. The maintenance provision of the MSA essentially provided that respondent was required to pay petitioner \$11,000 per month from October 2005 until June 2014 in addition to \$30,000 every October from 2006 to 2013.<sup>1</sup> Half of the maintenance obligation was terminable only if either party died, petitioner remarried, or petitioner resided with another person on a resident, continuing, and conjugal basis.

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<sup>1</sup> In October 2014, respondent had to pay petitioner \$22,500.

The other half of the maintenance award was terminable for these reasons and any other basis that was properly brought in a petition and granted after a hearing.

¶ 4 The MSA also contained a provision for “Attorneys’ Fees and Costs.” The relevant section, paragraph 18.3, provided that if either party challenged the enforceability of the MSA or “commence[d] post-decree litigation,” “that party shall pay his or her own fees, costs and expenses as well as the other party’s fees, costs, and expenses in connection with such challenge or post-decree matters[] if the other party prevails.”<sup>2</sup>

¶ 5 In March 2010, the parties entered into an agreement modifying maintenance. Essentially, as relevant here, respondent’s obligation to pay petitioner \$30,000 every year was terminated, and respondent’s monthly obligation was reduced to \$6,750. With regard to the monthly payments, the agreement indicated that “[t]hese non-modifiable maintenance payments may not be terminated for any reason other than the satisfaction of the entire obligation, *i.e.*, the making of all monthly payments by [respondent] to [petitioner] each month through and including June 15, 2014.” As a final matter, this agreement provided that “[e]xcept as provided in this Agreed Order, all other provisions of the Judgment [dissolving the parties’ marriage, which judgment incorporated the MSA,] are and shall remain in full force and effect.”

¶ 6 Over two years later, petitioner petitioned the court to hold respondent in indirect civil contempt of court, because respondent failed to pay maintenance pursuant to the March 2010 agreement. Respondent filed a response to petitioner’s petition; petitioned the court to terminate maintenance; filed an amended petition to terminate, reduce, or abate maintenance; and filed a notice to produce, asking petitioner to give respondent various documents related to petitioner’s finances. Petitioner properly responded to many of these filings, and respondent filed various

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<sup>2</sup> The exceptions are inapplicable here.

motions seeking to protect his financial documents and/or quash petitioner's request for his financial papers.

¶ 7 After the court found respondent in contempt and ordered him to pay petitioner \$27,000 in accrued maintenance, the court “hint[ed to respondent] that looking at the pleadings that [the court had] thus far \*\*\* [the court was] concerned that [respondent was] fighting a losing battle [in seeking to modify maintenance, given] the language in this [March 2010] agreed order that seems very clear to the Court.” That is, because the March 2010 agreed order prevented respondent from modifying the maintenance award, the court questioned the viability of respondent's petition to terminate or reduce maintenance. Thereafter, the court found that respondent owed petitioner \$9,000 in attorney fees that were incurred in litigating the contempt petition, and respondent voluntarily dismissed his petition to terminate or reduce maintenance.

¶ 8 Petitioner filed a petition for attorney fees incurred in defending against respondent's petition to terminate or reduce maintenance and related matters. Petitioner argued that, pursuant to section 508(b) of the Act (750 ILCS 5/508(b) (West 2012)), attorney fees were proper, because respondent brought his petition to terminate for an improper purpose. At the hearing on her petition, petitioner also argued for fees under paragraph 18.3 of the MSA, because she was the prevailing party. Respondent never objected to petitioner's argument concerning paragraph 18.3 of the MSA.

¶ 9 The court denied petitioner's petition for fees. In doing so, the court noted that “[t]his is a request for fees under 5-08(b) [*sic*].” Thus, the court said, “[t]his has to do with whether the proceeding was conducted for an improper purpose,” which “is my sole and exclusive focus.” The court went on to find that respondent did not bring his petition for an improper purpose, because, if he had, he would not have voluntarily dismissed the petition.

¶ 10 At issue in this appeal is whether the MSA, by its express terms, requires respondent to pay petitioner attorney fees she incurred in defending against the petition to terminate or reduce maintenance. Before addressing that issue, we note that petitioner never cited paragraph 18.3 in her petition for attorney fees. However, she did invoke it at the hearing on the petition, and respondent never objected. Accordingly, we determine that respondent has forfeited any claim that petitioner cannot argue on appeal that paragraph 18.3 provides that she is entitled to attorney fees. See *American National Bank & Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 279-80 (2000) (the plaintiff forfeited argument on appeal that the defendant’s motion to dismiss improperly relied on matters outside the complaint, as the plaintiff failed to raise this objection in trial court). The fact that the trial court did not consider the applicability of paragraph 18.3 of the MSA does not alter our view. The parties have briefed the issue of whether the MSA applies, and whether the MSA mandates that respondent pay petitioner attorney fees is a legal question, on which we owe no deference to the trial court. See *People ex rel. Daley v. Datacom Systems Corp.*, 146 Ill. 2d 1, 27 (1991); see also *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017 (2011) (interpreting an MSA presents a legal question). Thus, we consider the application of the MSA for the first time here. See *Daley*, 146 Ill. 2d at 27.

¶ 11 Turning to the merits of this appeal, “[i]nterpreting a[n MSA] is a matter of contract construction.” *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425 (2005). “As such, courts seek to give effect to the parties’ intent.” *Id.* at 426. “The language used in the [MSA] generally is the best indication of the parties’ intent [citation], and when the terms of the agreement are unambiguous, they must be given their plain and ordinary meaning [citation].” *Id.* Terms in an MSA are unambiguous when they are “susceptible to only one reasonable interpretation.” *In re*

*Marriage of Doermer*, 2011 IL App (1st) 101567, ¶ 27. As noted, “[w]e review *de novo* an interpretation of a marital settlement agreement.” *Dundas*, 355 Ill. App. 3d at 426.

¶ 12 Here, the terms of the MSA are unambiguous. Concerning maintenance, although the MSA originally provided that a portion of petitioner’s maintenance award was modifiable, the March 2010 agreed order clearly stated that the award was not modifiable. While the March 2010 agreed order altered the terms of the maintenance award, all other terms in the MSA remained in effect. See 750 ILCS 5/502(f) (West 2012) (“[T]erms of an agreement set forth in the judgment are automatically modified by modification of the judgment.”); *Doermer*, 2011 IL App (1st) 101567, ¶ 28.

¶ 13 One of those provisions of the MSA that was unaffected by the March 2010 agreed order was paragraph 18.3. Paragraph 18.3 expressly provides for attorney fees. Specifically, it states that, if a party commences an unsuccessful postdecree matter, that party has to pay the attorney fees the prevailing party incurred in litigating the issue.<sup>3</sup> Under the unambiguous terms of the MSA, respondent commenced an unsuccessful postdecree matter, and petitioner clearly was the prevailing party. Although, in other contexts, “prevailing party” may be defined differently (see *City of Elgin v. All Nations Worship Center*, 373 Ill. App. 3d 167, 169 (2007)), the clear intent of the parties here was to make the party who *unsuccessfully challenged* the MSA responsible for paying *all* attorney fees. Respondent unsuccessfully challenged the MSA in that the MSA was unaffected by his postdecree petition. Although the court did not officially rule against respondent in an oral or written judgment, the court made it quite clear to respondent that, given

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<sup>3</sup> This attorney-fee provision was proper. The Act allows parties to agree to any terms, as long as those terms do not impact the interests of the parties’ children. 750 ILCS 5/502(f) (West 2012).

the unambiguous terms of the March 2010 agreed order concerning the nonmodifiability of maintenance, he would lose if he pursued his petition to a final judgment, and respondent withdrew his petition only for that reason. If, given these facts, we were to hold that petitioner was not the prevailing party because respondent withdrew his petition, we would be elevating form over substance.<sup>4</sup> Clearly that is unwarranted under these circumstances.

¶ 14 Accordingly, because paragraph 18.3 remained in force and clearly provided that respondent would have to pay petitioner's attorney fees if he unsuccessfully challenged the MSA, we conclude that respondent was required to pay petitioner the attorney fees she incurred in defending against respondent's petition to terminate or reduce maintenance. Because the trial court did not determine the appropriate amount of fees, we remand this cause for the court to conduct a hearing on that issue.

¶ 15 For these reasons, the judgment of the circuit court of Lake County is reversed, and this cause is remanded for further proceedings.

¶ 16 Reversed and remanded.

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<sup>4</sup> Indeed, such a holding would encourage one party to harass the other simply by filing and withdrawing pleadings, causing the other party to pay needless attorney fees.