

NOTICE
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2015 IL App (5th) 140308-U

NO. 5-14-0308

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).

| | | |
|-----------------------|---|--------------------------|
| JOSEPH MALENCH, |) | Appeal from the |
| |) | Circuit Court of |
| Petitioner-Appellant, |) | Madison County. |
| |) | |
| v. |) | No. 11-D-483 |
| |) | |
| KAREN MALENCH, |) | Honorable |
| |) | Clarence W. Harrison II, |
| Respondent-Appellee. |) | Judge, presiding. |

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Cates and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order denying petitioner's motion to modify maintenance was affirmed. The court properly ruled that, under the marital settlement agreement, which was incorporated into the judgment of dissolution of marriage, modification of maintenance could only occur after 36 months or a specific terminating event.

¶ 2 The petitioner, Joseph Malench, appeals the order of the circuit court of Madison County denying his motion to modify maintenance, which he had agreed to pay pursuant to his marital settlement agreement with the respondent, Karen Malench, which was incorporated into the judgment of dissolution of marriage. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 The parties were married on October 5, 1985, and their marriage was dissolved on September 10, 2012. The parties entered into a marital settlement agreement, which was incorporated into the judgment of dissolution. In the marital settlement agreement, Joseph agreed to pay Karen maintenance. The maintenance provision of the marital settlement agreement provides, in pertinent part, as follows:

"In lieu of additional maintenance, pending the sale of the real estate owned by the parties, Husband shall pay the first mortgage, second mortgage, homeowner's insurance, utilities, and necessary repairs on the residence located at 1307 St. Louis Street, Edwardsville, Madison County, Illinois.

Husband shall pay to Wife the sum of Two Thousand One Hundred Dollars (\$2,100.00) per month, commencing within ten (10) days [of] the date of the closing on the sale of the residence located at 1307 St. Louis Street, Edwardsville, Madison County, Illinois. Maintenance shall be paid by Husband to Wife for a period of thirty-six (36) consecutive months beginning ten (10) days following the date of the sale of the former marital residence. It is the intention of the parties that Husband's obligation to pay maintenance shall be reviewed by the Court thirty-six (36) months from the first day of the first full month following the date of the closing on the former marital residence. The purpose of the review by the Court is to determine whether maintenance should be terminated, continued, or modified. Wife shall file a Petition to Review in the event she intends to extend

maintenance. Otherwise, maintenance shall terminate after payment for thirty-six (36) months. At a hearing on the review of maintenance, the burden of proof of continuance of maintenance, or its increase, shall be on the Wife. Husband shall be released from the obligation of payment as to future installments earlier than thirty-six (36) months upon the happening of any one or more of the following contingencies: death of Wife, death of Husband, the remarriage of Wife, or the Wife's cohabitation with another person on a continuing, conjugal basis."

The marital settlement agreement makes the maintenance award taxable to Karen and deductible to Joseph.

¶ 5 In the general provisions section of the marital settlement agreement, there is a nonmodifiability clause. The nonmodifiability clause states: "The terms of this agreement, other than regarding the children, shall not be subject to subsequent modification or change except by mutual consent of the parties."

¶ 6 On June 11, 2013, Joseph filed a motion to modify his maintenance obligation. In the motion, Joseph alleged an involuntary loss of his employment and a current economic situation that would constitute a significant change in circumstances such that his maintenance obligation should be terminated.

¶ 7 In response, on June 18, 2013, Karen filed a motion to dismiss Joseph's motion to modify maintenance. In her motion to dismiss, Karen alleged that the maintenance set forth in the marital settlement agreement was "maintenance in gross" and that it was nonmodifiable for the initial 36 months, except on the occurrence of one of the specific

stated contingencies of her death, Joseph's death, her remarriage, or her cohabitation. Raising the nonmodifiability clause, she also argued that the terms of the marital settlement agreement, other than regarding the children, were not subject to subsequent modification or change except by mutual consent of the parties.

¶ 8 On March 28, 2014, the court held a hearing on the motions. Joseph made the following offer of proof as to the circumstances warranting a modification/termination of the maintenance award. At the time of the dissolution, Joseph was employed in an information technology position at Scheffel & Company, P.C. He had been employed by Scheffel & Company for approximately 20 years. His earnings for 2011, the last full year immediately preceding the dissolution, were \$94,255.42. In June 2013, he was involuntarily terminated from Scheffel & Company due to the company closing its information technology department. He could not find alternate employment despite his efforts, and he ultimately went into business with another displaced Scheffel & Company employee. In the initial six months after his layoff, from July through December 2013, he earned approximately \$7,720.

¶ 9 On June 3, 2014, after supplemental briefing, the court entered a written order ruling on the motions. Initially, the court found that the maintenance provision of the marital settlement agreement was not a provision requiring a payment of "maintenance in gross." Therefore, the court denied Karen's motion to dismiss Joseph's motion to modify on that basis.

¶ 10 The court then noted that the marital settlement agreement specifically provides

for court review, without limitation, after the expiration of 36 months but that 36 months had not yet expired. The court also noted that a separate provision, regarding early termination during the initial 36-month period, facially limits termination during the initial 36-month period to four specific events. The court observed that Joseph's loss of employment, the basis for his motion to modify, is not one of those specific events. The court stated that when parties agree to the terms under which maintenance can be modified or terminated, their agreed terms take precedence over the provisions of section 510 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510 (West 2012)). The court concluded that, as a result, termination (or modification to \$0), as requested in Joseph's motion to modify, is a question of interpretation of the marital settlement agreement. The court found the list of agreed terms to be exclusive as to termination during the initial 36-month period. Accordingly, the court denied Joseph's motion to modify. Joseph filed a timely notice of appeal.

¶ 11

ANALYSIS

¶ 12 On appeal, Joseph argues that the trial court erred in ruling that, pursuant to the parties' marital settlement agreement, which was incorporated into the judgment of dissolution, maintenance could be modified only after the initial 36-month period or upon the occurrence of one of the specific terminating events. We disagree and affirm.

¶ 13 A marital settlement agreement is construed in the same manner as any other contract, and the court must ascertain the parties' intent from the language of the agreement. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). The interpretation of a marital

settlement agreement is a question of law, which is reviewed *de novo*. *Id.*

¶ 14 Section 502 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502 (West 2012)), which governs marital settlement agreements, provides, in pertinent part, as follows:

"(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children.

(b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds *** that the agreement is unconscionable.

* * *

(f) Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment."

¶ 15 "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 purpose of allowing parties to agree in advance to the circumstances under which maintenance may be modified or terminated is to permit them to plan for the future by eliminating concerns based upon subsequent motions to increase or decrease their obligations." *Id.* "The intent of the parties to preclude or limit modification of maintenance must be clearly manifested in their agreement." *Id.*

¶ 16 In *Schweitzer*, the parties had entered into a marital settlement agreement, which was incorporated into the judgment of dissolution, in which the husband agreed to pay the wife maintenance of \$1,500 per month. *Id.* at 426. The maintenance provision stated that "[t]he payment [of] maintenance shall not terminate upon the occurrence of any of the statutory events for the termination of maintenance, except for the death of either party." *Id.* The marital settlement agreement contained a general nonmodifiability clause, which stated that "[t]his Marital Settlement Agreement shall not be modifiable." *Id.* at 427. Six years later, the husband filed a petition to modify the judgment, alleging that a material change in circumstances had occurred and asking that his maintenance obligation be reduced. *Id.* In her response to the petition to modify, the wife alleged that, pursuant to the nonmodifiability clause, the maintenance provision could not be modified. *Id.* After hearing arguments of counsel, the trial court ruled that the husband's maintenance payments were nonmodifiable and dismissed the petition. *Id.* The appellate court affirmed, noting that the parties had clearly stated that the entire agreement was nonmodifiable, that there was no ambiguity in the language, and that the language was

sufficient to express the parties' intention that the maintenance provisions were not to be modified. *Id.* at 429.

¶ 17 Similarly, in *In re Marriage of Mateja*, 183 Ill. App. 3d 759, 761 (1989), the parties had entered into a marital settlement agreement providing that the husband would pay the wife unallocated child support and maintenance until the parties' child reached 18 years of age, at which time the husband would continue to pay a reduced amount in maintenance until the wife remarried. The agreement also stated that the wife was permitted to earn up to a certain annual income without adversely affecting the amount of maintenance due her. *Id.* The agreement also stated that "[t]he parties further agree that the terms of the Agreement shall be non-modifiable." *Id.* Several years later, the husband filed a petition to terminate maintenance. *Id.* The trial court denied the petition, finding that the parties intended the agreement to be nonmodifiable unless the wife earned in excess of the stipulated annual income, remarried, or died. *Id.* The appellate court affirmed, noting that where the dissolution judgment expressly precludes or limits, by clear and precise language, any modification, the trial court must give effect to the parties' expression of their intentions. *Id.* at 761-62. The court found the language used by the parties was simple, clear, and unambiguous. *Id.* at 762. The court found that the entire agreement was nonmodifiable unless, as specifically provided, the wife earns more than the stipulated annual amount, remarries, or dies. *Id.* None of these conditions had arisen. *Id.* Therefore, the court held that the trial court properly enforced the nonmodifiability clause and denied the husband's petition to terminate maintenance. *Id.*

¶ 18 Similarly, in the present case, the parties agreed that the terms of the marital settlement agreement, other than regarding the children, were not to be modified without their mutual consent. This language is simple, clear, and unambiguous, and, based on *Schweitzer* and *Mateja*, is sufficient to demonstrate the parties' intent that the entire marital settlement agreement, other than the provisions regarding the children, was nonmodifiable without their mutual consent.

¶ 19 The maintenance provisions in the marital settlement agreement indicate that Joseph is to pay Karen \$2,100 per month in maintenance for the initial 36-month period after the sale of the former marital residence. The court is to review Joseph's obligation to pay maintenance after the initial 36-month period to determine whether maintenance should be terminated, continued, or modified. Finally, Joseph's obligation to pay maintenance is to terminate earlier than the initial 36-month period upon the happening of any one or more of the specific contingencies: Karen's death, Joseph's death, Karen's remarriage, or Karen's cohabitation. The trial court properly interpreted the marital settlement agreement to mean that the maintenance provisions are nonmodifiable during the initial 36-month period absent the occurrence of one of the specific terminating events. None of the specific terminating events has occurred. Therefore, the trial court properly enforced the nonmodifiability clause and denied Joseph's motion to modify maintenance.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the order of the circuit court of Madison County denying the petitioner's motion to modify maintenance.

¶ 22 Affirmed.