2016 IL App (2d) 151277-U
No. 2-15-1277
Order filed September 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF STACY KANAN, Petitioner-Appellant, and ZAKARIYA KANAN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 12-D-961 Honorable David P. Kliment, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in calculating due child support by the inapplicable *Ackerley* method, rather than by the parties' marital settlement agreement; thus, we reversed and remanded for the proper calculation.

¶ 2 On November 15, 2012, the circuit court of Kane County entered a judgment dissolving the marriage of petitioner, Stacy Kanan, and respondent, Zakariya Kanan. The judgment incorporated the parties' marital settlement agreement (Agreement), under which Zakariya was obligated to pay child support for the parties' two children in the amount of "28% of his net income (as defined by Section 505 of the [Illinois Marriage and Dissolution of Marriage Act

(Act) (750 ILCS 5/505 (West 2012))]), but no less than $1,750 per month ($21,000 for a full calendar year)." In October 2014 and June 2015, Stacy filed petitions for rules to show cause why Zakariya should not be held in contempt for failure to pay the proper amount of child support. The trial court found that Zakariya owed additional child support for 2014 and 2015, but was not in contempt of court. Concluding that this court's decision in *In re Marriage of Ackerley*, 333 Ill. App. 3d 382 (2002), governed the calculation of child support due under the agreement, the trial court ordered Zakariya to pay an additional $1,892.96 for 2013 and $7,690.30 for 2014. Stacy appeals from that order, arguing that those amounts were inadequate. Because calculating child support by the method set forth in *Ackerley* was contrary to the terms of the Agreement, we reverse and remand for further proceedings.

¶ 3 Section 505(a)(5) (750 ILCS 5/505(a)(5) (West 2014)) provides, in pertinent part, that a final order setting child support "shall state the support level in dollar amounts." However, section 505(a)(5) further provides that "if the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the supporting parent's net income is uncertain as to source, time of payment, or amount, the court may order a percentage amount of support in addition to a specific dollar amount and enter such other orders as may be necessary to determine and enforce, on a timely basis, the applicable support ordered." *Id.* As incorporated into the dissolution judgment, the Agreement stated, in pertinent part, as follows:

> "In addition to [Zakariya's] base income of approximately $111,000 per year, he has received in the past (but it is not guaranteed) bonuses and other non-base pay compensation. Since [Zakariya's] child support amount cannot be expressed exclusively as a dollar amount because all or a portion of his net income is uncertain as to amount,

the Court is ordering a percentage amount of support in addition to a specific dollar amount, as contemplated by Section 505 (a)(5) of the *** Act.

Effective December 1, 2012, [Zakariya] shall pay 28% of his net income (as defined by Section 505 of the [Act]), but no less than $1,750 per month ($21,000 for a full calendar year), as and for child support. If [Zakariya] receives any net income in excess of $6,250 per month, then [Zakariya] shall use his best efforts to determine 28% of the net amount and pay this to [Stacy] within 14 days of receiving the additional income, as and for child support.

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Until [Zakariya] is no longer obligated to pay child support, [he] shall provide his federal and state income tax returns (with all attachments and schedules) and his final paycheck stub for the year to [Stacy] by no later than April 16th of each year. By no later than May 15th of each year, [Zakariya] and [Stacy] shall determine [Zakariya's] net income for the prior year (as defined by Section 505 of the [Act]), the amount of child support that [Zakariya] should have paid for that year and the amount of child support that he actually paid for that year. ***

If [Zakariya] has underpaid his child support obligation for the prior year, then, by no later than June 1st of that year, he shall tender the difference between what he should have paid and what he did pay to [Stacy]. If [Zakariya] has overpaid his child support obligation for the prior year, then, by no later than June 1st of that year, [Stacy] shall tender the difference between what he should have paid and what he overpaid to [Zakariya]."

¶ 4 It is well established that "[a] marital settlement agreement is construed in the manner of 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 presents a question of law, subject to *de novo* review. *Id.* The language of the Agreement is clear. Zakariya was required to pay 28% of his net income as child support. Because his income fluctuated, the Agreement provided for payment of a specific dollar amount representing 28% of a base net income of $6,250 per month. The specific dollar amount—$1,750—was the *minimum* amount of support. Upon receipt of net monthly income exceeding $6,250, Zakariya was required to use his best efforts to determine how much child support was due on the additional net income and promptly to pay that amount to Stacy. Each May, the parties were required to determine Zakariya's actual net income for the preceding year and the amount of support he should have paid that year—the greater of: (1) 28% of his *actual* net income or (2) $21,000.

¶ 5 Section 505(a)(3) of the Act (750 ILCS 5/505(a)(3) (West 2012)) defines "net income" to mean "the total of all income from all sources," minus deductions for, *inter alia*, state and federal income taxes, payroll taxes, and dependent and individual health/hospitalization insurance premiums. It is undisputed that, in 2013 and 2014, Zakariya's income and section 505(a)(3) deductions were as follows:

	2013	2014
Total Income	$134,414.26	$142,117.96
Deductions		
Federal Taxes	$ 8,926.00	$ 9,081.00
State Taxes	$ 5,180.00	$ 5,540.00
Social Security	$ 7,049.40	$ 7,254.00
Health Insurance	$ 1,920.00	$ 3,753.00
Medicare	$ 1,949.01	$ 2,060.71

Total	$ 25,024.41	$ 27,688.71
Net Income	$109,389.85	$114,429.25

Stacy contends that Zakariya's additional child support obligation is equal to 28% of his net income during 2013 and 2014 minus the amount of child support he actually paid in those years.

¶ 6 Rather than basing child support on Zakariya's *actual* net income (as the Agreement provided), the trial court calculated child support based on the method used in *Ackerley*. In *Ackerley*, the marital settlement agreement provided for $250 per week in child support plus "additional child support equal to 25% of any 'net bonus as defined by statute' received by [the obligor] from his employer." *Ackerley*, 333 Ill. App. 3d at 385. In 1995, the obligor's total income of $153,636 included a bonus of $48,827. To calculate the "net bonus," we determined the amount of state income tax and payroll taxes paid on the bonus income and reduced the income by those amounts. We used a different method, however, to calculate the deduction for federal income taxes. Rather than deducting federal income tax at the rate (or rates) that *actually applied* to the bonus income (*i.e.*, the *marginal* rate or rates), we calculated the deduction for "federal income tax attributable to [bonus income]" (*id.* at 392) by multiplying the obligor's total 1995 federal income tax by the quotient of his bonus income divided by his total income. We reasoned that "[b]y attributing a proportionate share of the tax to the bonus, we eliminated the effect of tax bracketing used in the federal income tax system." *Id.* We added that "[n]either party should benefit or be prejudiced by the artifice of considering certain income as falling into a certain bracket." *Id.*

¶ 7 We agree with Stacy that the method used in *Ackerley*, is not appropriate here. The marital settlement agreement in *Ackerley* provided for percentage child support payments from the obligor's "net bonus," so we treated the obligor's bonus income as an entirely separate fund

from his regular income. *Id.* It was therefore necessary in *Ackerley* to determine an equitable method for apportioning federal income taxes to the bonus. Here, in contrast, the trial court was not called upon to determine the child support due on a "net bonus." The Agreement required Zakariya to pay child support equal to 28% of his net income as determined from, *inter alia*, tax returns and year-end pay stubs. Because all income—"base" and "bonus"—is treated as if taxed at a single effective tax rate, bracketing is simply not an issue. The result is essentially no different than it would have been had it been possible, *when the judgment was entered*, to determine in advance how much bonus income Zakariya would receive and how it would affect his federal income tax liability.

¶ 8 The trial court concluded that calculating child support in the manner Stacy advocated "results in a greater amount of child support *due to the difference in tax rates*, which is precisely what *Ackerley* sought to avoid." (Emphasis added.) It is true that, when applied to this case, the *Ackerley* approach results in lower child support. This is not due to the difference in tax rates, however. Rather, the *Ackerley* approach results in lower child support in this case because the Agreement significantly overestimated Zakariya's section 505(a)(3) deductions from his *base* income[1] and *Ackerley* is concerned only with the determination of net *bonus* income.[2]

¶ 9 Zakariya stresses that the Agreement provides that support is to consist of "a percentage amount *** in addition to a specific dollar amount, as contemplated by Section 505(a)(5) of the

[1] The Agreement assumed that Zakariya would be entitled to deduct $36,000 from a base income of $111,000. As seen, Zakariya's deductions totaled $25,024.41 in 2014 and 27,688.71 in 2014. In both years, his total income exceeded the base amount.

[2] In fact, by prorating federal income taxes, the *Ackerley* approach actually increases child support on bonus income taxed at comparatively high rates.

[Act]." According to Zakariya, calculating child support in the manner Stacy advocates ignores the Agreement's "set dollar amount" of support. This is simply not true. Stacy's child support calculation is based on the set amount—$21,000 per year—and a percentage of the amount by which Zakariya's net income exceeds the predicted net income ($6,250 per month) from which the set amount was determined. Stacy is guaranteed to receive no less than the set amount of $21,000 per year.

¶ 10 In 2013, Zakariya's net income was $109,389.85, which was $34,389.85 more than a monthly net income of $6,250 would have come to. Zakariya owed $9,629.16 in child support in addition to the $21,000 specified in the Agreement. Thus, total child support for 2013 is $30,629.16. In 2014, Zakariya's net income was $114,429.25, which was $39,429.25 more than a monthly net income of $6,250 would have come to. Zakariya owed $11,040.19 in child support in addition to the $21,000 specified in the Agreement. Thus, total child support for 2014 is $32,040.19. We reverse the judgment below and remand for entry of judgment for these amounts minus whatever has already been paid as child support for the years in question.

¶ 11 Reversed and remanded.