2017 IL App (4th) 160285-U

NO. 4-16-0285

FILED
February 2, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF LYNN M. WALKER, n/k/a LYNN M. McLEOD,	)	Appeal from Circuit Court of
Petitioner-Appellant and Cross-Appellee,	)	McLean County No. 08D223
and	)	
CLARK A. WALKER,	)	Honorable
Respondent-Appellee and Cross-Appellant.	)	Lee Ann S. Hill, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court's judgment modifying maintenance, where a marital settlement agreement provided that maintenance could be modified only by mutual agreement of the parties.

¶ 2 Petitioner, Lynn M. Walker (n/k/a Lynn M. McLeod), and respondent, Clark A. Walker, were married in 1988. Their marriage was dissolved in 2008. As part of the dissolution proceedings, the trial court incorporated the parties' marital settlement agreement (Agreement) into the judgment of dissolution. The settlement agreement provided that Clark would pay maintenance to Lynn in the amount of $6,000 a month for a term of "not more than one hundred and twenty (120) months." The settlement agreement also provided that "[t]his Agreement may only be amended or modified by mutual agreement of the parties."

¶ 3 In March 2015, Clark filed a petition to modify maintenance, alleging a change in circumstances in that his income had decreased and Lynn's had increased. Lynn argued that the

settlement agreement barred the trial court from modifying maintenance without the mutual consent of both parties. The court disagreed and modified the term of maintenance to 102 months, keeping the monthly amount at $6,000. Lynn appeals, arguing that the court erred by improperly construing the settlement agreement and abused its discretion in modifying maintenance. Clark cross-appeals, arguing the trial court erred in that the amount of maintenance is modifiable. We agree with Lynn on her first point and reverse the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Dissolution of Marriage and the Marital Settlement Agreement

¶ 6 Clark and Lynn were married in 1988. The marriage produced no children. Beginning in 1995, Clark worked as a self-employed attorney in Bloomington, while Lynn worked as his office manager without receiving a salary. In the last year of their marriage, Clark earned between $190,000 and $200,000.

¶ 7 In May 2008, the parties dissolved their marriage. The trial court incorporated the parties' Agreement into its judgment of dissolution. The Agreement contained the following two sections relevant to this appeal:

> "9. Commencing with the first payment of June 15, 2008, [Clark] shall pay [Lynn] as and for spousal support and maintenance the sum of six thousand dollars ($6,000.00) per month for a period of not more than one hundred and twenty (120) months. *** Said maintenance *** shall terminate on the occurrence of the statutory provisions as outlined in 750 ILCS 5/510(c) [(West 2008)] upon the death of either party, or the remarriage of [Lynn], or if [Lynn] cohabits with another person ***.
>
> * * *

13. This Agreement may only be amended or modified by mutual agreement of the parties. Any such amendment or modification shall be reduced to writing, dated and signed by both parties and shall specifically provide that it is intended to alter or amend this Agreement. No oral agreement shall be effective to, in any manner, modify or waive any terms or condition of this Agreement."

¶ 8 B. Proceedings on Clark's Petition To Modify Maintenance

¶ 9 In March 2015, Clark filed a petition to modify maintenance, arguing that since the dissolution of the marriage his income had decreased, while Lynn's had increased. He requested the trial court to modify maintenance in the amount the court saw fit.

¶ 10 In response, in May 2015, Lynn filed a "Motion for Summary Judgment and Motion To Dismiss." The filing argued that Clark's petition to modify should be denied because the Agreement prohibited the modification of maintenance without the written, mutual agreement of both parties.

¶ 11 In July 2015, the trial court conducted a hearing on Lynn's "Motion for Summary Judgment and Motion To Dismiss." (No transcript or bystander's report of this hearing appears in the record on appeal.) In September 2015, the court entered an order denying Lynn's motion. In it, the court found that the Agreement was drafted not by Clark personally, but by someone named "Mr. [Don] Hammer." (The court stated that this information was presented during argument on Lynn's motion; however, again, no transcript of that hearing appears in the record on appeal.) The court denied Lynn's motion.

¶ 12 In February 2016, the trial court conducted a hearing on Clark's petition to modify maintenance. During the hearing, the parties presented extensive testimony about Clark's and Lynn's earnings. As relevant to the issues on appeal, Clark testified that he drafted a marital set-

tlement agreement that was thereafter edited and revised by "Mr. Don Hammer" and eventually became the Agreement.

¶ 13 In March 2016, the trial court entered an order granting Clark's petition to modify maintenance. In its order, the court found that Mr. Hammer had "partially redrafted" the Agreement. The court determined that Clark had established a change in circumstances that supported modifying maintenance. Accordingly, the court ordered Clark to pay maintenance to Lynn in the amount of $6,000 a month for 102 months instead of 120 months.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Lynn makes the following arguments, in the alternative: (1) the trial court erred by determining that maintenance could be modified by the court without the mutual agreement of the parties; and (2) even if the court was not prohibited from modifying maintenance, the court's particular modification constituted an abuse of discretion. Because we agree with Lynn's first argument, we need not and do not consider her second.

¶ 17 A. Construction of the Agreement

¶ 18 Lynn's first argument requires us to construe the Agreement and, in particular, sections 9 and 13, which addressed maintenance and modification of the Agreement, respectively.

¶ 19 1. *Statutory Language, Rules of Construction, and the Standard of Review*

¶ 20 a. Statutory Language Addressing the Modification of Maintenance

¶ 21 Section 510(a) (a-5) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a) (a-5) (West 2008)) addresses modification of maintenance. It provided the following at the time the Agreement was incorporated into the judgment of dissolution:

"(a) Except as otherwise provided in paragraph (f) of Section 502 ***, the provisions of any judgment respecting maintenance or support may be modified *** by the moving party of the filing of the motion for modification. ***

* * *

(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. " *Id.*

¶ 22 However, section 502 of the Act (750 ILCS 5/502 (West 2008)) provided the following about how parties to a dissolution may limit the court's authority to modify maintenance:

"(a) To promote amicable settlement of disputes between parties to a marriage ***, the parties may enter into a written or oral agreement containing provisions for *** maintenance ***.

(b) The terms of the agreement *** are binding upon the court unless it finds *** that the agreement is unconscionable.

***

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such terms ***.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment *** and are enforceable as contract terms.

(f) *** *[T]he 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 modifica-

tion of the judgment." (Emphasis added.)

¶ 23 b. Construing Marital Settlement Agreements

¶ 24 The normal rules of contract construction apply when construing a marital settlement agreement. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425, 823 N.E.2d 239, 241 (2005). When interpreting a contract or marital settlement agreement, a court's primary objective is to give effect to the intent of the parties. *Id.* at 426, 823 N.E.2d at 241. The best indication of the parties' intent is the unambiguous language of the agreement, given its plain and ordinary meaning. *Id.* Where the language of the agreement is ambiguous, parol evidence may be used to determine the parties' intent. *Id.* We review a trial court's construction of a marital settlement agreement *de novo*. *Id.*

¶ 25 2. *Case Law Addressing Marital Settlement Agreements That Proscribe Modifications of Maintenance*

¶ 26 In *In re Marriage of Schweitzer*, 289 Ill. App. 3d 425, 428, 682 N.E.2d 759, 760 (1997), this court held the following about marital settlement agreements containing a provision limiting the modification of maintenance:

> "It is clear that parties may agree that maintenance shall not be modified or terminated except upon certain specified conditions. When the parties so agree, maintenance may be modified or terminated only under the circumstances specified in the agreement. 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."

¶ 27 The above-referenced holding of *Schweitzer* comports with the statutory dictate of section 502(f) of the Act (750 ILCS 5/502(f) (West 2014)) that "the judgment [of dissolution]

may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides." Any such prohibition or limitation on modification of maintenance must be "clearly manifested" in the agreement. *In re Marriage of Scott*, 205 Ill. App. 3d 561, 564, 563 N.E.2d 995, 997 (1990). When such a clearly manifested limitation is included in a marital settlement agreement, the language of the agreement "take[s] precedence over the statutory conditions upon which maintenance may be terminated or modified." *In re Marriage of Brent*, 263 Ill. App. 3d 916, 921, 635 N.E.2d 1382, 1386 (1994). However, "where the language utilized by the parties is not an express preclusion of modification, the court retains its authority to modify maintenance." *Id.* at 925, 635 N.E.2d at 1388.

¶ 28 3. *This Case*

¶ 29 Based on case law and section 502(f) of the Act, it was well established at the time the trial court incorporated the Agreement that "parties to a dissolution action are permitted to enter into settlement agreements which alter the court's ability to terminate and modify maintenance." *Id.* at 921, 635 N.E.2d at 1386. The question for this case then becomes the following: Did the particular language of the Agreement in this case function to preclude the trial court from modifying maintenance? We answer that question in the affirmative.

¶ 30 The language of the Agreement—contained in section 13—was express, clear, and unambiguous: "This Agreement may only be amended or modified by mutual agreement of the parties." That language contained no wiggle room or superfluous or ambiguous verbiage. It could mean only one thing: the sole way to modify the terms of the Agreement was through the mutual agreement of the parties. Section 13 applied to the entire Agreement, including section 9, which specifically addressed maintenance. Therefore, the language of section 13 "[took] precedence" over the court's authority to modify maintenance pursuant to the statutory provisions of

section 510 of the Act. See *id*.

¶ 31 Clark's arguments to the contrary are not persuasive. First, Clark argues that if the parties intended to preclude the trial court from modifying maintenance, they would have explicitly included such a provision in the section of the Agreement addressing maintenance (section 9) instead of in a separate section applicable to the entire Agreement (section 13).

¶ 32 This argument was addressed and convincingly rejected in *Schweitzer*, 289 Ill. App. 3d at 429, 682 N.E.2d at 761, thusly: "Taken to its logical conclusion, respondent's argument would mean that in order to preclude modification of all provisions of the Agreement, it would be necessary for the parties to expressly state in each article of the Agreement that the particular provision was unmodifiable. Such a requirement would be superfluous." We agree. We cannot think of any good reason—or find any authority requiring—that a limitation on maintenance must appear in the same section of the Agreement establishing the maintenance award. Perhaps in a case in which the parties intended that *only* the maintenance award would be unmodifiable, it would make better sense to include that limitation in the same section as the maintenance award. However, in this case, the language of section 13 explicitly applied to the *entire* Agreement, including the maintenance provision of section 9.

¶ 33 Next, Clark argues that the language of section 9 providing that maintenance would last for a term of "no more than" 120 months implied that the trial court retained the authority to decrease but not increase the term of maintenance. Clark argues further that the limiting language of section 13 was not specific enough to overcome that alleged implication of section 9. The trial court was persuaded by this argument, but we are not.

¶ 34 Again, the language of section 13 could not have been clearer. That language prohibited the amendment or modification of any part of the Agreement absent the mutual consent

of both parties. Any implication otherwise created by section 9 was overridden by the language of section 13.

¶ 35 Further, under our interpretation of section 9, no such implication existed. Section 9 established that Clark would pay Lynn $6,000 for up to 120 months. Under our reading of section 9, the "no more than" 120 months language meant that maintenance would terminate at 120 months if it had not already terminated due to one of the conditions explicitly listed in section 9: (1) "any of the statutory provisions outlined in 750 ILCS 5/510(c) [(West 2008)]," (2) the death of either party, (3) the remarriage of Lynn, or (4) the cohabitation of Lynn with another person. Section 9 therefore did not provide—even by implication—that the trial court could modify maintenance without the mutual consent of both parties as required by section 13.

¶ 36 We note that section 9 adopted the statutory provisions concerning *termination* of maintenance contained in section 510(c) of the Act (750 ILCS 5/510(c) (West 2008)). Importantly, section 9 did not adopt the provisions for *modification* of maintenance contained within section 510(a) of the Act (750 ILCS 5/510(a) (West 2008)).

¶ 37 In passing, we note that because the Agreement unambiguously prevented the trial court from modifying maintenance, we have no need to consider whether Clark or Hammer drafted the Agreement. In addition, because we have determined that the Agreement barred the trial court from modifying maintenance *at all*, we need not address Lynn's alternative argument that the court's particular modification of maintenance in this case was an abuse of discretion. Likewise we need address no further Clark's argument by cross appeal that the amount of maintenance was modifiable.

¶ 38 B. Motion to Strike Reply Brief

¶ 39 As a final matter, we have considered Lynn's motion to strike Clark's "Cross Ap-

pellant's Reply Brief," and we decided to take that motion with the case. We now grant Lynn's motion.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we reverse the trial court's judgment.

¶ 42 Reversed.