

2017 IL App (1st) 161878-U
No. 1-16-1878
Order filed June 6, 2017

Second Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE THE MARRIAGE OF)	Appeal from the Circuit Court
)	of Cook County.
VALERIE WASHINGTON,)	
)	
Petitioner-Appellant,)	No. 14 D 4407
)	No. 14 D 5971
and)	
)	
KENNETH WASHINGTON,)	The Honorable
)	Mark Joseph Lopez,
Respondent-Appellee.)	Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying wife’s petition to review spousal maintenance.
- ¶ 2 Valerie Washington appeals from the trial court’s denial of her petition for review of the spousal maintenance she receives from her ex-husband, Kenneth Washington. Their marital settlement agreement stated that spousal maintenance would be “reviewable” once the Michigan rental property they jointly owned was sold. The sale of that property triggered the trial court’s ability to review the spousal maintenance, but did not automatically increase the spousal

maintenance. Valerie failed to give the trial court adequate reason to increase her maintenance, so we affirm the denial.

¶ 3

BACKGROUND

¶ 4

The Washingtons’ marital settlement agreement stipulated that their rental property in Michigan would be sold, and Kenneth would be responsible for its costs until the sale. The agreement also stated that Kenneth would pay Valerie maintenance less than the “guidelines amount,” but that “the amount of maintenance paid by Kenneth to Valerie shall be reviewable on the sale of the Michigan property.” Shortly after the Michigan property was sold, Valerie filed a “petition to modify maintenance.” In that petition, Valerie stated that since the Michigan property had been sold, Kenneth should be ordered to pay her the full maintenance amount. The petition contained no further facts or discussion of the maintenance amount. In response, Kenneth asked the court to continue maintenance at the current level, as he was still responsible for jointly-owned Maryland property and anticipated that it would eventually be sold at a loss. The trial court denied the petition, holding that the agreement’s plain language set maintenance at \$1262 per month and if Valerie wanted more, she needed to be present to advocate for a change in maintenance based on a change in circumstances.

¶ 5

ANALYSIS

¶ 6

The interpretation of a marital settlement agreement is a question of law we review de novo. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). Although Kenneth did not file a brief responding to Valerie’s arguments, we may decide this appeal on its merits as the record and claimed errors are straightforward and can be determined without the aid of an appellee’s brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)).

¶ 7 Changes in spousal maintenance are governed by 750 ILCS 5/510 (West 2015). The statute distinguishes between attempts to modify or terminate maintenance, which can be done only on “a showing of a substantial change in circumstances,” versus a “review” of the maintenance amount. When a party seeks “review” of maintenance that party does not have the burden to prove a substantial change in circumstance. *Blum*, 235 Ill. 2d at 35-36.

¶ 8 Was Valerie seeking modification or review? Her brief toggles between the two. In the trial court, Valerie filed a “petition to modify maintenance.” The title seems to show that Valerie sought modification, and would need to show a “substantial change in circumstances.” But the body of the petition relies on the agreement’s provision that maintenance would be “reviewable” after the sale of the Michigan property. This indicates that Valerie actually intended to seek review of the maintenance under the terms of the agreement. See *In re Marriage of Golden*, 358 Ill. App. 3d 464, 473-74 (2005) (Bowman, J., dissenting) (encouraging courts to interpret such petitions according to substance of petition rather than words used in title).

¶ 9 750 ILCS 5/510(a-5) provides that when maintenance is reviewed, the trial court has to consider the applicable factors in 750 ILCS 5/504 (West 2015), and additional factors listed in section a-5. There is no need to list all of these factors, but they include such questions as whether there have been changes in either party’s employment, income, or property, as well as “any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/510(a-5)(1), (7), (9). A review of maintenance can be general or limited: a general review includes consideration of all the factors, but a review can be limited by the terms of the original order or agreement. See *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 27. For example, an order might state that future reviews would only consider whether the party receiving maintenance has tried to find more lucrative employment. *Id.*

¶ 10 Valerie argues that the agreement “clearly stated the intent of the parties to reduce the amount of maintenance only until the sale of the Michigan property.” Hence, she is arguing that the trial court’s “review” is limited by the language of the agreement and once the sale occurs, her maintenance must be increased to the full amount regardless of any other circumstance. In other words, the trial court need not consider the statutory factors.

¶ 11 We disagree with Valerie’s interpretation of the agreement. If the parties had intended that the maintenance amount would increase automatically after the sale, the agreement could have said so. Instead, the agreement expressly states that the amount is “reviewable” after the sale, indicating that the sale triggers the trial court’s ability to examine the issue, but does not mandate an outcome. The agreement states outright that the Michigan rental property operates at a loss, and that its sale may involve a substantial reduction in price. This shows that the parties contemplated that the maintenance may increase after the sale, but the statutory factors must be considered.

¶ 12 Valerie’s petition is less than two pages long and provides no facts, evidence, or argument as to the statutory factors. The agreement allowed the trial court to review the maintenance, but she completely failed to provide the trial court with any basis for that review. Thus, the trial court did not err in denying her petition.

¶ 13 Affirmed.