2014 IL App (2d) 130155-U
No. 2-13-0155
Order filed June 16, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHAEL MARRON, Petitioner-Appellant/Cross-Appellee, and SUSAN MARRON, Respondent-Appellee/Cross-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 03-D-1700 Honorable John W. Demling, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly conducted a general review of the husband's maintenance obligation at the end of the first term, and it did not abuse its discretion in lowering the monthly payment from $1,100 to $900.

¶ 2 On October 12, 2012, the trial court reduced petitioner Michael Marron's monthly maintenance obligation to respondent, Susan Marron, from $1,100 to $900. Michael appeals, arguing that the trial court should have abated the obligation altogether, because, in his view, Susan waived maintenance in an earlier, 2009 agreement. We disagree that the 2009 agreement, read as a whole, contained said waiver. Therefore, we reject Michael's argument.

¶ 3 Susan cross-appeals, arguing that the trial court abused its discretion by granting Michael relief outside of that expressly pleaded in the four corners of his petition, namely, a reduction as opposed to an abatement. However, Michael's lack of precision in the pleadings does not provide a basis upon which to vacate the order.

¶ 4 Alternatively, Susan argues that, even if the question of reduction was properly before the court, the court erred in reducing the support amount where there was no substantial change in circumstances. However, because the parties' agreement called only for a general review at the end of the term, the substantial-change requirement did not apply. For all these reasons, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 Michael and Susan married in 1993. They had no children. In the 1990's, Susan had a stroke. This caused her to become disabled. Specifically, Susan had a condition known as aphasia, which is a loss, in varying degrees, of a previously held ability to speak. Michael then had a stroke in 2004. He was able to continue working on a part-time basis. His total annual income from part-time work was $80,000.

¶ 7 In 2005, the parties divorced. The judgment of dissolution incorporated the parties' settlement agreement, which required Michael to pay Susan $2,000 in monthly support for a term of 72 months.

¶ 8 Shortly after the divorce, Susan began receiving government aid in the form of supplemental social security income (SSI). Susan received $698 per month in SSI, and Medicaid paid for her medical expenses. She also received monthly food stamps, worth approximately $149.

¶ 9 In 2009, the parties realized that Michael's $2,000 monthly support payments jeopardized Susan's ability to qualify for government aid. Therefore, in a cooperative effort, the parties entered into an agreement to modify the support obligation, which the court approved. Rather than pay the support to Susan directly, Michael would now pay into a trust established by Susan's mother in 1993. Susan was the sole beneficiary of the trust during the period relevant to this appeal. The trustee, Susan's brother-in-law, Gregory Henderson, would disburse funds to Susan in a manner that complied with the law for a person receiving government aid, as will be discussed in more detail below.

¶ 10 The 2009 agreement reduced Michael's monthly support obligations from $2,000 to $1,100. There were two reasons for the reduction. First, Michael would no longer be taking an income-tax deduction for the payments as he had when he made the payments directly to Susan. Second, Susan did not need as much income from Michael, given that she now received government aid.

¶ 11 The 2009 agreement contained the following relevant provisions:

> "ARTICLE II. MAINTENANCE. ARTICLE II of the Judgment for Dissolution of Marriage [concerning maintenance] is hereby deleted in its entirety. The following language replaces the former ARTICLE II:
>
> ***
>
> 2.11 But for the payments ordered from MICHAEL, SUSAN would not otherwise fully qualify for governmental benefits which would pay for her basic support and contribute to the cost of her medical and residential care.
>
> 2.12 MICHAEL and SUSAN further acknowledge, however, that as a result of her disabilities, governmental benefits will not be sufficient to provide for many of SUSAN's

supplemental needs above and beyond that income and those goods and services provided to her by governmental benefits, and that she will incur costs which will not be met by those benefits.

2.13 MICHAEL and SUSAN agree, therefore, that MICHAEL shall make payments in the amount of $1,100 per month, said payments made payable to Gregory M. Henderson, not individually, but as Trustee of SUSAN HIMES OBRA ’93 Trust, said funds to be used for SUSAN’s needs, to supplement but not supplant those costs paid by governmental benefits, pursuant to the terms thereof.

2.14 MICHAEL’s obligation under Paragraph 2.13 above shall be reviewable as to term in six (6) years from the date of entry for the [2005] Judgment of Dissolution of Marriage, but modifiable at any time upon a substantial change in circumstances.

2.15 Within sixty (60) days prior to the 72nd month of said six-year period, MICHAEL may file a petition seeking to modify and/or abate his obligation as to said payments to the Trustee. However, during the pendency of said motion to modify and/or abate, MICHAEL’s duty to make said payments to the Trustee shall continue in full force and effect, until further order or for six months, whichever first occurs.

2.16 In the event that MICHAEL does not file a Petition to modify and/or abate said payments pursuant to paragraph 2.14, above, MICHAEL’s duty to pay $1,100 per month to the Trustee of the [1993 Trust] shall continue in full force and effect until modified or terminated by further court order.

***

2.21 SUSAN hereby waives any and all right she may have to claim and receive maintenance from MICHAEL, past, present, and future, pursuant to the laws of the State

> of Illinois or any other state or country for as long as SUSAN receives governmental assistance (SSI). Should said governmental assistance cease, future obligations for support will be subject to reinstatement. The Court [is] to retain jurisdiction to modify the terms and the duration of maintenance in the event the governmental assistance ceases.
>
> 2.22 The parties hereby acknowledge that as of the date of the entry of this order, there is no arrearage owed by MICHAEL relative to maintenance payments."

¶ 12 Within 60 days of the end of the first term, Michael filed a petition to abate based on waiver and for "any other relief as may be just." Michael argued that, in paragraph 2.21, Susan waived future maintenance payments.

¶ 13 At hearing, three witnesses testified over two days: Henderson, Susan, and Michael. On the first day, early into Henderson's testimony, Susan's counsel objected to the scope of his testimony:

> "Your Honor, the scope of the petition is to abate based upon the court not having jurisdiction [or authority based on Susan's alleged waiver]. So we have spent almost half an hour going over financial things [as though this were a general review or a petition to modify]."

The court disagreed, and it stated that the question of modification was properly before it.

¶ 14 At the start of the second day of hearings, Susan's counsel again objected to the scope of the hearing. The court again overruled her objection. Susan did not ask for a continuance to prepare for the issue of modification.

¶ 15 Henderson continued his testimony. He explained that he oversees Susan's financial affairs. There are many rules governing people who receive the sort of government aid that

Susan receives, and Henderson is careful to comply with those rules. For instance, the government aid, including food stamps, must fund Susan's housing and food purchases. Henderson uses the government funds to pay, among other things, the mortgage and real estate taxes on the one-bedroom condominium in which Susan lives. Henderson detailed Susan's remaining monthly expenses, which are paid for out of the trust, as follows: (1) gas ($100); (2) telephone, internet, and cable ($180); (3) clothing ($80); (4) association fee ($190); (5) pet care (prorated to $65); (5) auto and homeowner's insurance (prorated to $67); (5) Costco membership (prorated to $5). Additionally, the trust pays for Susan's housekeeping supplies and personal care items. These predictable expenses averaged $600 to $800 per month. In addition to predictable expenses, the trust also maintains a surplus of funds to pay for items such as car repairs (recently $480), a new car (eventually), and furniture replacements (eventually). As of the date of trial, the trust's balance stood at around $30,000. This $30,000 came from Susan's family, not from Michael. Henderson believed that $30,000 was an ideal surplus. It was enough to pay for unexpected items in the future, but it was not so much that it would go forever unused. This was important because, upon Susan's death, the trust's surplus funds would escheat to the State.

¶ 16 Susan testified next, although her condition often left her unable to answer the questions. She testified that Henderson assisted her in making financial decisions. She agreed to the expenses testified to by Henderson. The one difference in position between Susan and Henderson was that, while Henderson testified that Susan needed at least $600 to $800 for monthly necessities, Susan testified that she needed the entire $1,100.

¶ 17 Michael testified that, since his own stroke, he earned approximately $80,000 annually from part-time work. He had since remarried, and his new wife earned approximately $25,000 annually, bringing their household income to $105,000.

¶ 18 The trial court rejected Michael's waiver argument. It determined that the 2009 agreement addressed support "that was in the nature of maintenance," which it had continuing jurisdiction to review. The court found that the evidence supported a lower maintenance amount, and, so, it reduced the monthly payment from $1,100 to $900, to run for a five-year term.[1]

¶ 19 The trial court explained that a $900 contribution from Michael satisfied Susan's need to pay for anticipated living expenses above those provided for by the approximately $850 in government support. It also allowed for a reasonable surplus of funds to pay for "unanticipated or non-regular" expenses. However, the $900 amount was low enough to avoid an inappropriately high accrual of funds in the trust. The court was mindful that, many years from now, the funds from the trust would escheat to the State upon Susan's passing. To have Michael contribute funds that would ultimately go to the State would not serve the purposes of his support obligation.

¶ 20 Michael moved to reconsider. The court denied the motion. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, Michael argues that, in the 2009 agreement, Susan waived future maintenance, and, therefore, the trial court did not have authority to continue the maintenance obligation for another term. On cross-appeal, Susan argues that the trial court abused its discretion in reviewing the maintenance *amount* because Michael never expressly pleaded for a

[1] The court also addressed Michael's arrearage, not at issue on appeal.

reduction. Alternatively, Susan argues that, even if the issue was properly before the trial court, the court erred in reducing the maintenance from $1,100 to $900.

¶ 23 A. Appeal: No Waiver

¶ 24 Michael, pointing to paragraph 2.21 of the 2009 agreement, argues that Susan expressly waived maintenance. Citing *In re Marriage of Brent*, 263 Ill. App. 3d 916, 922 (1994) and *In Marriage of Simmons*, 77 Ill. App. 3d 740, 743 (1979), he argues that the courts must honor an agreement by the parties to limit future modifications of maintenance provisions. Therefore, in his view, the trial court did not have authority to continue maintenance obligations for another term.

¶ 25 In determining whether Susan waived maintenance, we look to basic contract-interpretation guidelines. A marital settlement agreement is to be construed like 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). To determine the parties' intent, we must consider the contract as a whole, looking to each part in light of the other rather than looking at an isolated word or phrase. *In re Marriage of Tucker*, 223 Ill. App. 3d 671, 676-77 (1992).

¶ 26 Here, paragraph 2.21 states in part: "SUSAN hereby waives any and all right she may have to claim and receive maintenance from MICHAEL, past, present, and future, pursuant to the laws of the State of Illinois or any other state or country for as long as SUSAN receives governmental assistance (SSI)." However, when considering the agreement as a whole, paragraph 2.21 does not preclude Susan from receiving support from Michael while simultaneously receiving government aid. The agreement itself, in paragraph 2.13, dictates that Michael provide support during a time that Susan was receiving government aid. As stated in paragraphs 2.11 and 2.12, Susan's receipt of the government aid prompted the parties to enter

into the agreement in the first place. In paragraphs 2.14 to 2.16, the agreement instructs upon the reviewability of the support award—the very thing Michael now complains the court cannot do. Therefore, taking paragraphs 2.11 to 2.16 into account, the only reasonable way to read paragraph 2.21 is as a statement of intent that Michael pay funds to the trust for Susan's benefit rather than to Susan directly.

¶ 27 In sum, Susan did not waive maintenance. The trial court, therefore, retained jurisdiction, or authority, to consider maintenance issues. Our resolution obviates the need to further address Michael's additional arguments.

¶ 28 B. Cross-Appeal: The Court did not Err in Reducing the Support Amount

¶ 29 On cross-appeal, Susan argues that the trial court abused its discretion in reviewing the maintenance *amount* because Michael never expressly pleaded for a reduction. Alternatively, Susan argues that, even if the issue was properly before the trial court, the trial court erred in reducing the maintenance from $1,100 to $900. Michael did not file a brief in response to the cross-appeal. However, we may consider the issues raised in the cross-appeal because the record is simple, and the claimed errors are such that we can easily decide them without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 30 Susan first argues that the court exceeded its authority in reducing the maintenance amount, because Michael did not expressly request a *reduction* in his complaint. Instead, Michael prayed that maintenance be *abated* based on waiver and for "any other relief as may be just." Susan notes that section 2-604 of the Code of Civil Procedure states that "[e]very count in every complaint and counterclaim shall contain specific prayers for relief to which the pleader deems himself or herself entitled ***. *** Except in case of default, the prayer for relief does not

limit the relief obtainable, but where other relief is sought the court shall, by proper orders, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise." 735 ILCS 5/2-604 (West 2012). Further, section 510 of the Illinois Marriage and Dissolution of Marriage Act provides that "the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2012).

¶ 31 The statutes cited by Susan do not support her argument that Michael's lack of precision in the pleadings provides a basis to vacate the modification. For us to consider vacating the order, Susan would have had to argue surprise. See, *e.g.*, *Klaisner v. Klaisner*, 28 Ill. App. 3d 110, 113-14 (1975) (the court exceeded its authority by conveying the wife's interest in the marital home, where such relief was first requested at a default hearing at which the wife was not present); *cf. In re Marriage of Hochleutner*, 260 Ill. App. 3d 684, 689 (1994) (the court had authority to rule on the maintenance issue, even though it was not formally pleaded, where the opposing party did not object to the shortcoming in the pleading, the pleading did, at a minimum, request "other just relief," and the court heard evidence on the issue). Susan summarily stated that she was surprised, but did not cite to any supporting facts or case law. Therefore, she did not sufficiently raise the issue of surprise.

¶ 32 In any case, Susan would have been hard-pressed to establish surprise. The record shows that, as in *Hochleutner*, Michael did make a minimal request for "any other relief as may be just" as pertains to maintenance. In the context of maintenance, Michael's position would be to favor either abatement or reduction. Where he expressly asked for abatement, logic dictates that the "other relief" would be a reduction. Moreover, unlike in *Klaisner*, Susan, through her attorney,

participated in the evidentiary hearing (without asking for a continuance). Again, Susan simply does not establish that Michael's lack of precision in the pleadings warrants appellate relief.

¶ 33 On the merits, Susan argues that the trial court should not have reduced the maintenance amount, because Michael did not establish a substantial change in circumstances. However, a substantial change in circumstances is not required where the settlement agreement calls for a general review at the end of a term. *In re Marriage of S.D. and N.D.*, 2012 IL App (1st) 101876, ¶ 24. Instead, the trial court may skip to the factors set forth in sections 504(a) and 510(a-5) of the Dissolution Act and determine whether to continue, modify, or terminate the maintenance payment terms. *Id*. These factors include each spouse's respective needs, assets, present and future earning capacities, and impairments, etc. *Id*. ¶ 27. Where the record establishes the basis for a maintenance award, the trial court need not make explicit findings for each statutory factor. *Id*. ¶ 29. We will not disturb the trial court's order following a general review of maintenance unless the court abused its discretion. *Id*. The court has abused its discretion if its ruling is arbitrary or unreasonable, or if no reasonable person would have taken the view adopted by the trial court. *Id*.

¶ 34 We hold that the agreement instructs that a general review be performed at the end of the term, upon Michael's request. We base our holding on the following considerations: (1) the general rule set forth in case law; (2) statutory-interpretation guidelines; and (3) the sentence structure of the provision at issue.

¶ 35 The general rule is that, where a marital settlement agreement provides for support that is reviewable after a period of years, the parties have agreed to a general review of maintenance. *S.D. and N.D.*, 2012 IL App (1st) 101876, ¶ 24 (relying on *Blum*, 235 Ill. 2d at 35). Here, the agreement states in pertinent part:

> "2.14 MICHAEL's obligation under Paragraph 2.13 above *shall be reviewable as to term in six (6) years* from the date of entry for the Judgment of Dissolution of Marriage, but modifiable at any time upon a substantial change in circumstances." (Emphasis added.)

Because the 2009 agreement provides for support that is reviewable after a period of years, we presume that the general rule applies. A closer look at paragraph 2.14, with reference to statutory-interpretation guidelines, confirms our presumption.

¶ 36 The statutory interpretation guideline, "the inclusion of one is the exclusion of the other," may be applied in interpreting a marital settlement agreement. *In re Marriage of Hendry*, 409 Ill.App.3d 1012, 1018 (2011). Here, paragraph 2.14 does not specify the standard to be applied when conducting an end-of-term review. In contrast, the agreement does specify that Michael's burden when seeking a mid-term review is to establish a substantial change in circumstances. The specific inclusion of the substantial-change test when referring to mid-term review evinces an intent that it not be applied to an end-of-term review.

¶ 37 Moreover, the sentence structure of paragraph 2.14 sets up end-of-term review and mid-term review as having different standards. Paragraph 2.14 contains only a single sentence. That sentence has two parts, which are joined by a disjunctive: "[the] obligation *** shall be reviewable as to term in six (6) years from the date of entry for the Judgment of Dissolution of Marriage, *but* modifiable at any time upon a substantial change in circumstances." (Emphasis added.) Therefore, the sentence structure supports that the parties did not intend for the substantial-change test to be applied to an end-of-term review.

¶ 38 Susan argues that the phrase, "shall be reviewable *as to term* in six years," means that only the term of the maintenance is generally reviewable and any other end-of-term modification

is subject to the substantial-change test. We disagree. Perhaps the agreement contained problematic language, but, again, the overall structure of the provision instructs that a general review of the award is to be performed at the end of the term if Michael requests one.

¶ 39 We acknowledge that, during the hearing, the trial court occasionally used language indicating it would be performing a traditional modification analysis, which looks for a substantial change in circumstances. However, this does not undermine our determination that only a general review was needed. In *S.D. and N.D.*, for example, the appellate court discounted the trial court's occasional use of language associated with the substantial-change-in-circumstances requirement. *S.D. and N.D.*, 2012 IL App (1st) 101876, ¶ 26. Rather, what mattered was that the court performed the proper analysis. *Id.*

¶ 40 Having found that the court was not required to find a substantial change in circumstances, we note that many of Susan's arguments are no longer relevant. Moving on, we look to see whether the trial court abused its discretion in conducting a general review of Michael's maintenance obligations.

¶ 41 Susan contends that the trial court erred in reducing the payments, because her needs exceed $900 per month. She recaps Henderson's testimony that her recurring needs are approximately $800 per month and that, in addition, she has other, less predictable expenses. These other expenses include the eventual purchase of a new car and new furniture.

¶ 42 We disagree that the trial court did not account for future expenses. Susan's monthly needs outside government aid averaged between $600 and $800. For each month that Susan spent only $600, an extra $300 would remain in the trust for future purchases. Additionally, the court was aware that the $30,000 trust surplus could be tapped to pay for future expenses. We cannot say that the trial court's efforts to give Susan precisely what she needed, and little more,

constituted an abuse of discretion. Rather, the court carefully and sensitively considered all available factors. The court was mindful that, upon Susan's passing, any excess money in the trust would escheat to the State.

¶ 43 Susan argues that it was improper for the court to consider that the trust would ultimately escheat to the State. However, she cites no authority in support of this argument. To the contrary, the statute provides flexibility, instructing courts to consider "any other factor that the court expressly finds to be just and equitable" when making a maintenance determination. 750 ILCS 5/504(a) (West 2004). Additionally, case law supports that courts should take the unique circumstances of each case into consideration. See, *e.g.*, *In re Marriage of Krupp*, 207 Ill. App. 3d 779, 793 (1990) (courts have wide latitude in considering what factors should be considered, and are not limited to those factors listed in the governing statute). The court did not err in considering that the trust would escheat to the State.

¶ 44 III. CONCLUSION

¶ 45 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 46 Affirmed.