2014 IL App (3d) 120897-U

Order filed April 25, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
JERILYN JONES, f/k/a JERILYN COURTER,	)	Kankakee County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-12-0897
and	)	Circuit No. 96-D-123
	)	
MICHAEL L. COURTER,	)	
	)	The Honorable
Respondent-Appellant.	)	Michael D. Kramer,
	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held*: The appellate court affirmed the circuit court's ruling that pursuant to the terms of a marital settlement agreement, the respondent owed the petitioner back child-support and college expenses related to the parties' child.

¶ 2 The petitioner, Jerilyn Jones, f/k/a Jerilyn Courter, filed a petition that sought to collect on alleged arrearages of child support and college expenses from the respondent, Michael Courter, with regard to the parties' child. The circuit court granted the petition after finding that

under the parties' marital settlement agreement (MSA), Jerilyn was entitled to the amount she requested. On appeal, Michael argues that the circuit court lacked jurisdiction to order him to pay Jerilyn's requested amount. Alternatively, Michael argues that that even if the court had jurisdiction, the court misconstrued the MSA. We affirm.

¶ 3 FACTS

¶ 4 On March 15, 1996, Jerilyn filed a petition for dissolution of her marriage to Michael. Jerilyn and Michael had one child together, Ariel, who was born on September 2, 1990. On May 24, 1996, the circuit court entered an order that granted Jerilyn's petition and that incorporated the parties' martial settlement agreement (MSA). Jerilyn received custody of Ariel, and Michael agreed to pay Jerilyn $110 per week in child support. The MSA stated that Michael's child support obligation would terminate if one of several conditions were met, the relevant two being when Ariel reached the age of majority or Ariel's "enrollment and remaining a student at college as hereinafter described." With regard to Ariel's potential undergraduate education, the MSA stated, *inter alia*, "[d]uring the full time the child is in actual residence at school and the Husband is paying board and lodging for her, the child support payments for such child shall be abated partially to fifty percent (50%) of the amount herein provided."

¶ 5 In 2000, Jerilyn filed a petition to modify child support based on Michael's increased income. The circuit court granted the petition and set Michael's child support obligation at $152 per week. The court's order granting the petition was signed on March 21, 2001, which included the line, "[a]n Order for Withholding shall be issued herein." The court signed a Uniform Order for Support on March 27, 2001, which stated, *inter alia*, that "[t]his obligation to pay child support terminates on 09-02-2008 unless modified by written order of the Court." Michael in fact ceased child support payments when Ariel turned 18 years old.

¶ 6 On June 6, 2012, Jerilyn filed a petition for child support that alleged Michal was in arrears on his child support and college-education obligations as defined by the MSA. The petition stated that Ariel had attended Kankakee Community College from August 2008 through May 2011, during which time she resided with Jerilyn, and Loyola University from August 2011 to May 2012, during which time she lived on campus. The petition alleged that Michael did not pay the reduced child support amount mandated by the MSA during Ariel's time in college and that Michael failed to pay his share of certain expenses Ariel incurred during her schooling. Jerilyn requested that the circuit court order Michael to pay her $12,379.86, $10,944 of which was for the alleged child-support arrearage.

¶ 7 In August 2012, the circuit court held a hearing at which the parties appeared *pro se* and presented arguments. The court ruled in favor of Jerilyn and ordered Michael to pay the $12,379.86 requested by Jerilyn. Michael appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, Michael argues that the circuit court lacked jurisdiction to order him to pay $12,379.86. Michael contends that the March 2001 Uniform Order for Support order modified the original dissolution order to set an absolute termination of his child support obligation at the time Ariel turned 18.

¶ 10 "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); see also *In re Marriage of Coulter*, 2012 IL 113474, ¶ 19. Courts should interpret a contract so as to give effect to all of the contract's provisions, which includes consistency between provisions. *Roubik v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 285 Ill. App. 3d 217, 219 (1996); accord *Coulter*, 2012 IL 113474, ¶¶ 28-33 (discussing the importance

of enforcing agreements made in marital settlement agreements and joint parenting agreements). The interpretation of an MSA presents a question of law that we review *de novo*. *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 17.

¶ 11 In this case, the court's March 21, 2001, order modified only the amount Michael was obligated to pay as child support. The court also ordered that "[a]n Order for Withholding shall be issued herein." The Uniform Order for Support followed the court's order seven days later. One section of the Uniform Order for Support contained the line "[t]his obligation to pay child support terminates on 09-02-2008 unless modified by written order of the Court." Michael's first argument on appeal is premised on this line.

¶ 12 The line from the Uniform Order for Support cited by Michael in his argument on appeal cannot reasonably be read to be a wholesale abdication of the MSA's provisions on support for Ariel. First, Michael's argument misapprehends the nature of a Uniform Order for Support, which is a form used to ensure the enforcement of a child support obligation—in this instance, the Uniform Order for Support mandated that Michael make his child support payments to the Kankakee County circuit court clerk. Second, when the circuit court modified the amount of child support Michael was obligated to pay, the parties were not revisiting the issue of financial support for Ariel while she was in college. Third, there is no compelling reason[1]—including no legal precedent—for this court to construe the Uniform Order for Support in a manner that would defeat the parties' agreement as codified in the MSA, as the MSA had been incorporated into the

[1] This includes Michael's unconvincing argument that because the first provision in question foreclosed his obligation to pay child support, the latter provision in question should be read as abating a $0 obligation by 50%, which yields $0. See *Rubin v. Laser*, 301 Ill. App. 3d 60, 68 (1998) ("[c]ourts construe contracts so as to avoid absurd results").

court's dissolution order and was therefore enforceable (*Coulter*, 2012 IL 113474, ¶ 33; *Bolte*, 2012 IL App (3d) 110791, ¶ 17).

¶ 13 Alternatively, Michael argues that even if the circuit court had jurisdiction to enter the August 2012 order, the court misconstrued the MSA because it provided that either his obligation had ended when Ariel turned 18 or its termination and college-expense provisions were inconsistent and should have been construed against Jerilyn. We disagree.

¶ 14 In the MSA, the parties agreed that Michael would provide weekly child support for Ariel to Jerilyn, which would terminate, in relevant part, on Ariel reaching the age of majority or on her enrolling and remaining a student in college. The parties also agreed that "[d]uring the full time the child is in actual residence at school and the Husband is paying board and lodging for her, the child support payments for such child shall be abated partially to fifty percent (50%) of the amount herein provided." While the MSA in this regard was inartfully drawn, we do not find these provisions to be inconsistent or ambiguous. By including the latter provision, the parties unambiguously intended for Michael to provide some financial support to Ariel if she decided to go to college and if certain circumstances were met.

¶ 15 For the foregoing reasons, under the circumstances presented by this case, we reject Michael's arguments on appeal[2] and uphold the circuit court's ruling.

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[2] We also reject Michael's undeveloped argument added at the end of his brief that Jerilyn should not have been awarded child support back to 2008 because she waited to file her petition until almost four years after Michael stopped child support payments. The only authority Michael provided in support of this argument was two inapposite sections of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502(f), 510(a) (West 2010)). Those sections refer to modification of child support obligations, and Jerilyn's June 2012 petition was a

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Kankakee County is affirmed.

¶ 18 Affirmed.

¶ 19 JUSTICE SCHMIDT, dissenting.

¶ 20 The trial court and the majority have rewritten the MSA in this case or, at the very least, have construed an ambiguity in favor of the drafter in contravention to accepted principles of a contract construction.

¶ 21 In pertinent part, the child support provisions of the MSA provide:

> "Said support *shall terminate on the occurrence of <u>any</u> of the following*:
>
> a. Child's attaining legal majority.
>
> b. Upon the child's enrollment and remaining a student at college as hereinafter described.
>
> c. Child's marriage.
>
> d. Child's death." (Emphasis added.)

Clearly, the child support terminated on Ariel's 18th birthday.

¶ 22 With respect to college expenses, the MSA agreement provides for college expenses that Michael agreed to pay. In pertinent part, the agreement also provides:

> "c. During the full time the child is in actual residence at school and the Husband is paying board and lodging for her, the child support payments for such child shall be abated partially to

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request for an enforcement of a child support obligation and not a request for a modification of that obligation.

fifty percent (50%) of the amount herein provided."

¶ 23 The dissolution order incorporating the MSA was modified by orders of March 21, 2001, and March 27, 2001. The March 27 order specifically provides "[t]his obligation to pay child support terminates on 09-02-2008 unless modified by written order of the Court." This language is consistent with the child support provision in the MSA.

¶ 24 Ariel turned 18 on September 2, 2008. Michael made his last child support payment on September 5, 2008. In August of 2008, Ariel began classes at Kankakee Community College. After September of 2008, Michael paid one-half of the tuition and college-related expenses, but did not pay child support. In August of 2011, Ariel began classes at Loyola where she resided on campus. It was not until June 6, 2012, that Jerilyn filed a petition for child support, demanding back payment for child support and other expenses.

¶ 25 Both the MSA and the trial court's order of March 27, 2001, clearly state that the obligation to pay child support terminates on September 2, 2008, Ariel's 18th birthday. The trial court and the majority rely on language regarding college expenses for Ariel which provides: "[d]uring the full time the child is in actual residence at school and the Husband is paying board and lodging for her, the child support payments for such child shall be abated partially to fifty percent (50%) of the amount herein provided." After September 2, 2008, there was no child support obligation to abate.

¶ 26 The majority acknowledges that the MSA "was inartfully drawn." *Supra* ¶ 14. This is legalese for ambiguous. The majority also asserts that "the parties unambiguously intended for Michael to provide some financial support to Ariel if she decided to go to college and if certain circumstances were met." *Id.* This is true. The parties did agree that Michael would provide some financial support to Ariel if she went to college, this included one-half of all of her

expenses. Those expenses are not at issue in this appeal. If anything in the MSA is unambiguous, it is that child support payments terminated on September 2, 2008.

¶ 27 The majority concludes that the parties' intentions were obvious. This assertion is defied by the fact that Jerilyn never sought child support until four years after Michael stopped paying child support as provided by the MSA and subsequent court order. Michael even sent Jerilyn a letter in September of 2008 advising her that pursuant to the agreement, he would no longer be paying child support. No reasonable person could look at the MSA and conclude that it is "obvious" that *both* parties intended it to mean that child support would continue beyond Ariel's majority if she went to college.

¶ 28 In a nutshell, the MSA provides that the child support shall *terminate* in the event the child obtains legal majority, dies, gets married, or upon the child's enrollment and remaining a student in college "as hereinafter described."

¶ 29 It is "hereinafter described" that the child support would not terminate by virtue of Ariel going to college. However, while Michael was paying one-half of the bills at college, any child support payments would be "abated partially to fifty percent (50%) of the amount herein provided." This is a far cry from saying that if Ariel went to college, any previously terminated child support would begin anew at 50% of the previously agreed upon rate.

¶ 30 The MSA agreement was written by Jerilyn's attorney. Michael was unrepresented. The contract must be construed against its drafter. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460 (1998).

¶ 31 Furthermore, the March 27, 2001, Uniform Order for Support specifically provided that "[t]his obligation to pay child support terminates on 9-02-2008, unless modified by written order by this Court." Michael stopped paying child support after September 2, 2008. On June 6, 2012,

Jerilyn filed a petition for child support, demanding payment for back child support. There had been no court order after September 2, 2008. On August 2, 2012, after a hearing, the trial court found Michael owed back child support in the amount of $10,944. This is not right. See *Rodgers v. Rodgers*, 118 Ill. App. 3d 334 (1983).

¶ 32 Because I would reverse that part of the trial court's order awarding child support after September 2, 2008, I respectfully dissent.