

**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  
SECOND DISTRICT

---

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
MARY MARGARET HENNESSY,	)	of Du Page County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 10-MR-1820
	)	
JAMES F. HENNESSY,	)	Honorable
	)	Paul A. Marchese,
Respondent-Appellant.	)	Judge, Presiding.

---

JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court did not err in dismissing the respondent's petition to terminate maintenance.

¶ 1 The respondent, James F. Hennessy, appeals from a trial court order dismissing his petition to terminate the petitioner's, Mary Margaret Hennessy's (Peggy's), right to receive maintenance pursuant to the parties' marital settlement agreement. The trial court determined that the maintenance award was not modifiable without the agreement of the parties. We affirm.

¶ 2

I. BACKGROUND

¶3 Peggy and James were married on May 9, 1980. Three children were born to the parties: Erin Margaret Hennessy, born October 29, 1984; Patrick James Hennessy, born August 10, 1986; and Caitlin Anita Hennessy, born August 25, 1990. On December 22, 2005, Peggy filed a petition for dissolution of marriage in the circuit court of Cook County. A judgment for dissolution of marriage was entered on June 11, 2008. The judgment incorporated a marital settlement agreement (Agreement). At the time of the judgment, the parties' two eldest children had reached the age of emancipation. The Agreement contained the following relevant provisions:

“3.1 Commencing retroactive to June 1, 2008, JAMES shall pay un-allocated child support and maintenance in the amount of [\$4,000] per month for the support of PEGGY and the parties' minor child, [Caitlin], until CAITLIN becomes emancipated as defined in Article VI. Upon CAITLIN's emancipation, JAMES shall continue to pay PEGGY permanent maintenance at the rate of [\$3,000] per month. \*\*\*

\*\*\*

3.6 Upon the termination of the JAMES' obligation to pay PEGGY child support for the benefit of CAITLIN, above, JAMES shall immediately pay PEGGY the sum of [\$3,000] per month as and for permanent maintenance. \*\*\*

3.7 JAMES' obligation to pay PEGGY maintenance shall terminate upon the first of the following to occur: (1) PEGGY's death; (2) JAMES' death \*\*\*; (3) PEGGY's remarriage; or (4) PEGGY's cohabitation with an unrelated person on a resident, continuing, and conjugal basis.

3.10 The award of maintenance from JAMES to PEGGY is predicated upon JAMES' gross base salary in the amount of [\$127,000] per year and PEGGY has a gross earning potential of approximately [\$30,000] per year.

3.11 On or before February 15<sup>th</sup> each year, for so long as either JAMES and/or PEGGY has an obligation to pay child support, maintenance, or contribute toward a child's educational expenses, the parties shall each produce a copy of their annual W-2 Wage Statement and 1099 Forms, \*\*\*. Each year, the parties shall provide one another with a complete copy of their federal and state income tax returns, including all schedules and attachments, \*\*\*. The parties shall produce the aforesaid documentation each year for so long as one or both of the parties has an obligation to pay child support, maintenance.

3.12 JAMES waives his right to receive maintenance from PEGGY, past, present or future.

\*\*\*

14.7 Construction of Agreement:

\*\*\*

(d) The parties may only amend or modify this Agreement by a written Agreement dated and signed by them. No oral Agreement shall be effective to in any manner modify or waive any terms or conditions of this Agreement.

(e) The provisions of this Agreement shall not be subject to subsequent modification by any Court, except by mutual written consent of the parties.”

Finally, the judgment order incorporating the Agreement contained the following provision:

“4. Pursuant to Section 5/502(f) of the Illinois Marriage and Dissolution of Marriage Act, (750 ILCS 5/502(f)) or any similar successor statutory provision, the terms of the Marital Settlement Agreement incorporated in this Judgment for Dissolution of Marriage shall not be subject to modification by subsequent action of any court without the express written consent of both parties or except as otherwise set forth herein.”

¶ 4 On July 16, 2010, James filed a petition, in the circuit court of Cook County, to terminate Peggy’s right to receive maintenance based on a substantial change in circumstances. In the motion, James alleged that he had lost his job, was unsuccessful in obtaining new employment, and no longer had an income from which he could pay maintenance. On August 12, 2010, Peggy filed a motion to dismiss James’s petition, pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)). In her motion, Peggy argued that, pursuant to paragraph 4 of the judgment order, the maintenance award was nonmodifiable and it could only terminate according to the provisions of paragraph 3.7 of the Agreement.

¶ 5 On November 8, 2010, Peggy filed a motion to transfer the post-judgment proceedings to Du Page County. On December 1, an order was entered transferring the cause. On January 25, 2011, Peggy filed, in Du Page County, another motion to dismiss James’s petition to terminate maintenance. A hearing was held on Peggy’s motion to dismiss on March 14, 2011. At the hearing, Peggy argued that paragraphs 14.7(d) and 14.7(e) of the Agreement rendered maintenance nonmodifiable absent a written agreement between the parties. James argued that those provisions were “hidden in [a] dusty corner of the judgment” and did not clearly express an intent by the parties to render maintenance nonmodifiable.

¶ 6 On March 15, 2011, the trial court entered an oral ruling. The trial court found that the clear intent of the parties was that Peggy would receive permanent maintenance. The trial court acknowledged that the Agreement did not expressly state that maintenance was nonmodifiable. Nonetheless, the trial court noted that paragraph 14.7, subsections (d) and (e), of the Agreement, and paragraph 4 of the judgment order, clearly indicated that the Agreement was nonmodifiable. Accordingly, the trial court found that the plain language of the Agreement and judgment indicated that maintenance was nonmodifiable. The trial court granted Peggy's section 2-619 motion to dismiss James's petition to terminate maintenance. A written order, granting Peggy's motion, was entered the same day. Thereafter, James filed a timely notice of appeal.

¶ 7 On December 30, 2011, this court dismissed the appeal for lack of jurisdiction. *In re Marriage of Hennessy*, No. 2-11-0354 (Dec. 30, 2011) (unpublished order under Supreme Court Rule 23). We noted that when the trial court dismissed James's petition to terminate maintenance, several other motions and petitions were pending. While some of those pending motions and petitions had been resolved by the time the record on appeal was filed, two of them were not. Accordingly, we dismissed the appeal because the trial court's March 15, 2011, order did not contain a finding, pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010)), that there was no just reason to delay enforcement or appeal of its order.

¶ 8 On January 20 and 23, 2012, respectively, James filed a petition for rehearing and a motion to supplement the record on appeal arguing that the two remaining matters had been resolved and that this court had jurisdiction to address the merits of his appeal. On February 9, 2012, this court entered an order granting the motion to supplement the record but denying the petition for rehearing.

We determined that the supplemental record did not establish appellate jurisdiction as it still showed matters pending before the trial court.

¶9 On March 13, 2012, James filed a motion to reconsider the denial of his petition for rehearing and a second motion to supplement the record on appeal. On March 30, 2012, we granted the motions, withdrew our previous order, and reinstated James's appeal. We determined that James's second motion to supplement the record on appeal did in fact establish that there were no longer any matters pending in the trial court. Accordingly, we address the merits of this appeal.

¶10

## II. ANALYSIS

¶11 On appeal, James argues that the trial court erred in granting Peggy's motion to dismiss his petition to terminate maintenance. James contends that the intent of the parties' Agreement was to permit judicial modification of maintenance. Rules of contract construction are applicable to the interpretation of a marital settlement agreement. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 425 (2005). The court's primary objective is to give effect to the intent of the parties. *Id.* at 426. Absent any ambiguity, the language used in the agreement is the best indication of the parties' intent and the terms in the agreement must be given their plain and ordinary meaning. *Id.* The interpretation of a marital settlement agreement and a determination of whether its terms are ambiguous is reviewed *de novo*. *Id.*

¶12 Section 502(f) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/502(f) (West 2008)), governs marital settlement agreements. Section 502(f) provides as follows:

“Except for terms concerning the support, custody or visitation of children, the 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 modification of the judgment.”

Accordingly, parties may agree that maintenance shall not be modified or terminated except under certain specified conditions. “When the parties so agree, maintenance may be modified or terminated only under the circumstances specified in the agreement.” *In re Marriage of Schweitzer*, 289 Ill. App. 3d 425, 428 (1997). The intent of the parties to preclude modification of maintenance must be clearly manifested in their marital settlement agreement. *Id.*

¶ 13 In *Schweitzer*, the parties had entered into a marital settlement agreement providing that the husband would pay the wife maintenance of \$1,500 per month. *Id.* at 426. They further agreed that the maintenance award would only terminate upon the death of either party and that “[t]his Marital Settlement Agreement shall not be modifiable.” *Id.* at 426-27. Six years later, the husband filed a petition to modify the judgment, based on an alleged reduction in his annual income. *Id.* at 427. The trial court denied the petition, finding that the maintenance payments were not modifiable. *Id.* The appellate court affirmed, holding that there was no ambiguity in the foregoing quoted language and that it was sufficient to express the parties’ intent that the maintenance provision was not to be modified. *Id.* at 429.

¶ 14 In the present case, section 14.7(d) of the Agreement clearly indicated that the parties can only amend the Agreement through a written agreement dated and signed by the parties. Section 14.7(e) clearly stated that the Agreement could not be modified by a court, absent mutual written consent of the parties. Furthermore, paragraph 4 of the judgment order also stated that the Agreement could not be modified except as otherwise set forth in the Agreement. This language contains no ambiguity and clearly expressed the intent of the parties that the Agreement could not

be modified except as agreed upon by the parties. Accordingly, the trial court did not err in granting Peggy's motion to dismiss James's petition.

¶ 15 In arguing that the language in the Agreement indicates that the parties intended to permit judicial modification, James relies on *In re Marriage of Sutton*, 178 Ill. App. 3d 928 (1989). In *Sutton*, the court construed contract language, similar to the language used in the present case, so as to permit judicial modification of the maintenance award. *Id.* at 931. The language of the marital settlement agreement in *Sutton* stated that the “[t]erms of this marital separation agreement shall not be changed or modified without the agreement and consent of both parties.” *Id.* at 930. However, we find *Sutton* distinguishable from the present case. In addition to the language that the terms of the agreement would not be changed, the agreement in *Sutton* included language setting limits on future modification of maintenance. *Id.* at 929-30. The reviewing court noted, therefore, that the agreement did not “preclude judicial modification entirely.” *Id.* at 931. In the present case, the Agreement did not set limits or establish guidelines for future modification of maintenance and section 14.7(e) specifically precluded judicial modification, absent mutual written consent of the parties. Accordingly, we find James's reliance on *Sutton* unpersuasive.

¶ 16 James argues that section 14.7 is too remote from section 3 of the Agreement, which addresses maintenance, such that the parties could not have intended for section 14.7 to apply to the issue of maintenance. A similar argument was also made by the husband in *Schweitzer*. In *Schweitzer*, maintenance was addressed in article II of the marital settlement agreement and the statement that the agreement was nonmodifiable was contained in article XV. *Schweitzer*, 289 Ill. App. 3d at 426-27. The husband argued that because article II addressed only termination of

maintenance, there was no intention to preclude modification. *Id.* at 428-29. The appellate court rejected this argument:

“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 nonmodifiable. Such a requirement would be superfluous. In article XV, the parties have clearly stated that the entire Agreement is nonmodifiable. There is no ambiguity in this language, and we find it sufficient to express the parties’ intention that the maintenance provisions of the Agreement are not to be modified.” *Id.* at 429.

We reject James’s argument for the same reasons. As noted above, paragraph 14, subsections (d) and (e), of the Agreement, and paragraph 4 of the judgment order clearly stated that the Agreement was nonmodifiable absent mutual consent of the parties.

¶ 17 Relying on *In re Marriage of Semonchik*, 315 Ill. App. 3d 395, 403 (2000), James argues that because unallocated child support and maintenance payments contain an element of child support, they must be subject to modification. See *id.* (holding that regardless of the terms in a marital settlement agreement stating that maintenance was nonmodifiable, “where the parties choose to lump maintenance in with child support, creating an ‘unallocated’ support payment, that ‘unallocated’ support payment is, by statute, modifiable”). However, in *Semonchik*, at the time the wife filed a petition to modify the unallocated maintenance and support, the children of the parties were not yet emancipated. If a petition to modify maintenance, which was originally part of an unallocated maintenance and support award provided by a marital settlement agreement, is filed beyond the time of the children’s emancipation, the terms of the marital settlement agreement are binding on the

parties and the court. See *In re Marriage of Doermer*, 2011 IL App (1st) 101567, ¶26 (2011) (citing *Blum v. Koster*, 235 Ill. 2d 21, 32 (2009)). In the present case, at the time James filed his petition to terminate maintenance, the youngest child had reached the age of emancipation and, therefore, the terms of the settlement agreement governed. James was not entitled to an automatic statutory right to modify the award and we find his reliance on *Semonchik* misplaced.

¶ 18 Finally, James argues that paragraph 3.11 of the Agreement is evidence that the parties intended that maintenance would be modifiable. Paragraph 3.11 indicated that the parties were to furnish each other, annually, with copies of their W-2 wage statements and 1099 forms. James contends that there would be no point in exchanging income and tax information if not to facilitate the modification of maintenance payments. At the outset, we note that Peggy argues that James waived this contention because he did not rely on paragraph 3.11 in the trial court as a basis to argue that maintenance was subject to judicial modification. Nonetheless, even absent any alleged waiver, this contention does not change the result in this case. Even if the point of paragraph 3.11 was to facilitate the modification of maintenance payments as James contends, the Agreement still clearly stated that any such modification would be by mutual consent of the parties.

¶ 19

### III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of circuit court of Du Page County.

¶ 21 Affirmed.