

NOTICE

Decision filed 08/27/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100595-U
NO. 5-10-0595
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

PAUL M. KOSCO,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Williamson County.
)	
v.)	No. 02-D-382
)	
CRISTA L. KOSCO,)	Honorable
)	Brian D. Lewis,
Respondent-Appellee,)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Wexsten concurred in the judgment.

ORDER

- ¶ 1 *Held*: The trial court properly separated maintenance from other financial obligations and petitioner's federal tax treatment of all said obligations on the basis of the parties' marital settlement agreement.

- ¶ 2 Petitioner, Paul M. Kosco, appeals an order of the circuit court of Williamson County terminating his obligation to pay maintenance to respondent, Crista L. Kosco, pursuant to the court's construction of a marital settlement agreement, but declining to terminate petitioner's obligation to pay a certain sum each year to cover respondent's medical deductible and her health insurance premium and to maintain a \$300,000 life insurance policy naming respondent as the beneficiary. The termination of maintenance was based upon the trial court's finding of cohabitation on a continuing conjugal basis under section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(c) (West 2010)). For the reasons stated below, we affirm.

¶ 3

FACTS

¶ 4 On June 24, 2003, a marital settlement agreement was entered into by petitioner and respondent and a judgment of dissolution of marriage was entered. Among other provisions, the marital settlement agreement required petitioner to pay \$1,250 per year to respondent to cover any medical deductible respondent incurred. Petitioner was also required to pay respondent's monthly health insurance premium, maintain a \$300,000 life insurance policy with respondent as main beneficiary, and pay respondent \$1,500 per month as maintenance. In May of 2010, petitioner filed a petition to terminate the maintenance obligation, based upon respondent's cohabitation with one John Rutherford.

¶ 5 The court heard testimony on this issue from respondent and Mr. Rutherford and also from petitioner's accountant, Mr. Kirk Doughty. Mr. Doughty testified as to the tax treatment of the payments stated above and told the court that petitioner had claimed all the aforementioned payments as maintenance when filing his tax return.

¶ 6 Subsequent to the hearing, the circuit judge entered an order resolving the issues between the parties. The court found that petitioner had established cohabitation on behalf of respondent and terminated maintenance. The court, however, declined to terminate the other obligations of petitioner mentioned above. Specifically, the court noted that the requirements of the monthly premium for health insurance and the additional \$1,250 for deductibles and out-of-pocket expenses were listed under Article II of the marital settlement agreement, said article being titled "Division of Real and Personal Property." The court further noted that maintenance came under a separate article, Article V, that was titled "Maintenance." The court specifically found:

"There is no language in the marital settlement agreement tying the payment of premiums and a stipend for deductibles to maintenance. Therefore, the [c]ourt does not find that that obligation of the [p]etitioner is equivalent to maintenance and

determines that that obligation of the [p]etitioner under the marital settlement agreement remains in full force and effect.

Similarly, Paragraph 9 of Article II states that [petitioner] shall name [respondent] as beneficiary to \$300,000 of his life insurance policies. In consideration of this paragraph [respondent] waives any and all claims of every kind she may have against the estate of [petitioner].

Again, there is no language in the marital settlement agreement to tie this in any way to the separate obligation and article of maintenance. Rather, the consideration stated has nothing to do with maintenance. Therefore, the [c]ourt also denies this request of the [p]etitioner and that obligation of the [p]etitioner under the marital settlement agreement shall remain in full force and effect."

¶ 7 Petitioner timely filed a motion to reconsider, which the court granted in part by making the determination of maintenance retroactive to May 24, 2010, but denied in all other respects. Petitioner timely appealed.

¶ 8 ANALYSIS

¶ 9 Petitioner argues to this court that the circuit court erred in not considering all of the payments mentioned above to be maintenance and accordingly terminating them upon its finding of cohabitation. Specifically, petitioner argues that as his accountant testified in regards to the tax treatment of these payments, he had petitioner claim them as legal deductions for maintenance, which petitioner argues is specifically allowed pursuant to 26 U.S.C.S. § 215 and 26 U.S.C.S. § 71(b). Petitioner also refers us to *In re Marriage of Flory*, 171 Ill. App. 3d 822, 525 N.E.2d 1008 (1988), in which the court stated:

"In the case at bar, the trial court did not attempt to evaluate the insurance as property. When petitioner convinced the court that she was unable to obtain adequate health insurance for herself, and respondent admitted that he could obtain coverage for her

under his policy, the trial court ordered him to obtain that insurance. We hold that the order was a legitimate exercise of the court's power to award maintenance under section 504 of the Illinois Marriage and Dissolution of Marriage Act. Ill. Rev. Stat. 1985, ch. 40, par. 504(b)." *In re Marriage of Flory*, 171 Ill. App. 3d at 830, 525 N.E.2d at 1013.

¶ 10 We disagree with petitioner's argument based upon the marital settlement agreement into which both petitioner and respondent entered. As noted above in the quote from the trial court's order, the monthly premium payment and the \$1,250 per year are contained under an article separate from maintenance. Article II contains these two provisions and is titled "Division of Real and Personal Property." That payment obligation specifically labeled as maintenance is contained under a separate article, Article V, titled "Maintenance." Upon our examination of the marital settlement agreement, we find no language linking these payment obligations to maintenance. We make no comment upon petitioner's accountant's treatment of these payments, but determine as controlling the agreement both petitioner and respondent entered into and which, therefore, determines both parties' rights and obligations. Petitioner urges the standard of review as being *de novo* and, accordingly, that we consider the contents of the record without any deference to the trial court's decision. We find that the trial court's determination of the questions before it, basing its decision upon the marital settlement agreement entered into by both parties, was correct.

¶ 11 Accordingly, we affirm the judgment of the circuit court of Williamson County.

¶ 12 Affirmed.