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2013 IL App (3d) 110422-U

Order filed May 20, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

In re MARRIAGE OF	)	Appeal from the Circuit Court
LISA BOMA,	)	of the 21 <sup>st</sup> Judicial Circuit,
	)	Kankakee County, Illinois,
Petitioner-Appellee,	)	
	)	Appeal No. 3-11-0422
v.	)	Circuit No. 05-D-312
	)	
DONALD C. BOMA,	)	Honorable
	)	Michael D. Kramer,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Where judgment of dissolution of marriage provided that respondent was to make weekly unallocated support and maintenance payments, the trial court erred by not modifying respondent's obligation to pay unallocated support and maintenance when he demonstrated a substantial change in circumstances.

¶ 2 Respondent Donald Boma filed an amended petition to modify his unallocated child support and maintenance payments to petitioner Lisa Boma. The court lowered the respondent's payments to \$115 per week, and also ordered that he pay \$85 per week towards payments

ordered under the judgment of dissolution that were overdue. In doing so, the court did not reduce the total amount that Donald owed under the terms of the judgment of dissolution. The court also ordered that Donald pay the 9% statutory interest on the past due amount. Donald appeals, contending that the trial court abused its discretion when it declined to reduce the total amount of the original unallocated support and maintenance payments. We reverse and remand for further proceedings consistent with this order.

¶ 3

### FACTS

¶ 4 The court entered an agreed Judgment for Dissolution of Marriage between Donald and Lisa on November 26, 2007. The judgment incorporated a verbal marital settlement agreement between the parties, in which Donald agreed to pay Lisa \$500 per week in unallocated support and maintenance starting June 27, 2007, “for a period of 36 months to be reviewed by proper notice and motion of either party at the end of said 36 months.” This paragraph of the dissolution judgment also stated that “[a]ll issues relating to unallocated support and maintenance may be reviewed upon a showing of substantial change in circumstances.”

¶ 5 Donald filed petitions to modify support on April 8, 2008, and March 10, 2009. In these petitions, Donald stated that after the judgment of dissolution was entered, his financial circumstances had substantially changed because he had lost his job. Therefore, Donald asserted that an abatement or reduction in his support payments was warranted. The court entered an order on April 17, 2009, finding that since it entered the dissolution order, Donald’s financial circumstances “have substantially changed in that he [was] no longer gainfully employed and has lost that source of income,” and this change “warranted a reduction of unallocated support and maintenance.” The court thus ordered Donald to pay Lisa \$250 per week for his unallocated

support and maintenance payments, starting April 8, 2008. The court also stated that “the issue of payment [of] unallocated support and maintenance may be reviewed by proper notice and motion of either party at the end of the payment of the full \$78,000 ordered in the Judgment for Dissolution of Marriage.”

¶ 6 Shortly thereafter, Donald filed another amended petition to modify support and requested that the court modify his support obligation to reflect Donald’s change of income. The court conducted a hearing on Donald’s amended petition on August 2, 2010. At this hearing, Donald’s counsel stated that at the prior hearing “[y]our Honor reduced [Donald’s] – at that time [Donald] was paying \$500 a week. Your Honor held that he still had to pay the same total amount but that he could pay 250 per week.” Lisa’s counsel agreed, stating that at the prior hearing, the court “suspended payments of 250 with the remainder of 250 to be paid and which would have been paid and was to continue to be paid until June 27<sup>th</sup> of ’10.” Counsel further stated that under the judgment of dissolution, Donald was to make weekly payments of \$500 for 36 months, or 156 weeks, totaling \$78,000 in unallocated support and maintenance payments to Lisa. Counsel stated that Donald still owed \$30,000 under the original dissolution order.

¶ 7 At the hearing, Donald and Lisa testified. Donald explained that since the court entered the dissolution order, he lost his job, experienced health problems and had increased health insurance costs. Donald nonetheless earned about \$1,000 per month of business income, \$400 per week in unemployment benefits, and also earned an income by farming. He also received \$800 per month in rental income. Donald believed that he could pay support in the amount of \$175 per week. Lisa testified that she currently had custody of the parties’ 15-year-old daughter. According to Lisa, in addition to owing \$30,000 of the original \$78,000 of unallocated support

and maintenance, Donald had missed three \$250 payments to her. Lisa also testified that she had recently found full-time employment.

¶ 8 The parties presented closing arguments. Donald's counsel stated that at the prior hearing, the court "lowered [Donald's] monthly payment but held [Donald] to the full amount[]" called for by the judgment. Counsel contended that the original amount could be modified upon a showing of substantial change in circumstances, and that Donald presented such circumstances with the showing that he lost his job and experienced increased health insurance costs. She proposed that the court reduce Donald's unallocated payments to \$175. Counsel also argued that if the court would not modify the original \$78,000 of unallocated support, the court should give Donald a longer time to pay it. Counsel nonetheless contended that this amount could be modified.

¶ 9 Lisa's counsel acknowledged that the court should not extend Donald's maintenance obligation, other than the obligation he had already incurred, but that he still owed child support for the parties' minor daughter. Counsel asserted that Donald also owed interest on the amounts that were overdue. Counsel estimated that Donald had a yearly net income of \$34,000, which would total a monthly child support payment of \$540. Counsel thus asked for this amount and an additional \$125 or \$150 per week towards Donald's overdue obligations.

¶ 10 The court entered a judgment of \$30,750 for Lisa. The court set child support at \$115 per week and also ordered Donald to pay Lisa \$85 per week towards the overdue unallocated support obligation. The court ordered that if Donald had not fully paid the overdue \$30,750 by the time his child support obligation expired, he was to continue making \$200 weekly payments to Lisa

until he paid this amount in full. The court also ordered Donald to pay the 9% statutory interest on the overdue amount.

¶ 11 Donald filed an amended motion to reconsider, contending that the court erred when it ordered him to pay Lisa \$30,750. Donald argued that the original amount of unallocated support and maintenance as provided for in the dissolution order was modifiable, and contended that when the court reduced Donald's payments to \$250, it treated maintenance as modifiable. The court denied this motion. Donald appeals.

¶ 12 ANALYSIS

¶ 13 On appeal, Donald contends that the trial court abused its discretion when it entered the \$30,750 judgment and ordered interest against him because it should have found a substantial change in circumstances and modified his unallocated support and maintenance obligation. Lisa, on the other hand, contends that the unallocated maintenance and support obligation was nonmodifiable and the court thus properly ordered Donald to pay the remaining \$30,750 owed, plus interest.

¶ 14 Before we address the merits of the case at bar, we must address the sufficiency of the Donald's appellate brief. An appellate court is entitled to have the parties clearly define the issues on appeal, complete with citations to pertinent authority and the presentation of a cohesive legal argument. *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1987). Pursuant to Supreme Court Rule 341(h)(7) (eff. July 1, 2008), the appellant must present a clear statement of contentions and reasons therefor, with supporting citations to legal authorities and the record relied on by the appellant. The appellate court is not a depository where the appellant may dump the burden of research and argument. *Lindquist*, 145 Ill. App. 3d at 719. "Ill-

defined and insufficiently presented issues" may be considered waived by the court. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010).

¶ 15 Donald has not complied with Supreme Court Rule 341(h)(7) because his briefs contain little citation to authority or application of the facts of this case to existing statutory or common law. In his initial brief, Donald argues that the trial court erred by treating his unallocated support obligation as nonmodifiable. Instead of presenting a legal analysis of the facts of the case, Donald just asserts that "[i]t is clear from the parties' agreement that maintenance is modifiable." Donald cites only *Blum v. Koster*, 235 Ill. 2d 21 (2009), but does not explain how *Blum* applies to the case at hand. In addition, after the initial briefing we ordered supplemental briefing on the issue of the trial court's authority to treat the unallocated support obligation as nonmodifiable. In response, Donald produced a one-page brief with no substantive argument other than the bare assertion that "[t]he trial court completely lacked authority to do this."

¶ 16 Such cursory arguments are insufficient and this Court could conclude that Donald has forfeited these arguments for purposes of appeal. Although his briefing leaves much to be desired, Donald has raised enough of an argument to guide our review and therefore in the interest of justice we will address the merits of the case. See *Luttrell v. Panozzo*, 252 Ill. App. 3d 597, 601 (1993).

¶ 17 Here, we must consider whether the trial court abused its discretion when it declined to modify Donald's original support and maintenance obligation under the judgment of dissolution. See *In re Lyons*, 155 Ill. App. 3d 300, 305 (1987) (modification of support and maintenance is will not be disturbed absent an abuse of discretion). To do so, we must consider the language of the judgment of dissolution.

¶ 18 Like other contracts, when a court interprets a marital settlement agreement, it must give effect to the intent of the parties. *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 269 (2003). The language the parties used in the marital settlement agreement is the best indicator of their intent, and if this language is unambiguous, a court will give the terms their plain and ordinary meaning. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 426 (2005). We interpret the provisions of a marital settlement agreement *de novo*. *Dundas*, 355 Ill. App. 3d at 426.

¶ 19 In this case, the trial court erred when it concluded the language of the agreement meant that Donald's unallocated support and maintenance payments were nonmodifiable for 36 months. The judgment of dissolution incorporating the parties's agreement provides that unallocated support and maintenance could be "reviewed by proper notice and motion of either party at the end of the 36 months." It also states that "[a]ll issues relating to unallocated support and maintenance may be reviewed upon a showing of a substantial change in circumstances." We conclude that by reading these provisions in concert, the latter provision indicates that the issue could be reviewed at any time upon a showing of a substantial change in circumstances, while the former provision indicates that maintenance was generally reviewable after 36 months, even if there was no substantial change in circumstances.

¶ 20 This conclusion is buttressed by the fact that under the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2008)), payments of unallocated support and maintenance must be modifiable. See *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 708 (1996). Under the Act, parties to a marital settlement agreement may expressly preclude or limit their ability to modify maintenance, but provisions pertaining to child support cannot be made nonmodifiable. See 750 ILCS 5/502(f) (West 2008).

"[W]here a marital settlement agreement contains an unallocated combination of child support and taxable maintenance payment, that payment is subject to the statutory right to modification contained in the Marriage Act. [Citations.] This is so even where the agreement contains a nonmodification clause. [Citations.] Therefore, although parties to a dissolution of marriage settlement agreement may negotiate that maintenance payments be 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." *In re Marriage of Semonchik*, 315 Ill. App. 3d 395, 403 (2000).

¶ 21 Accordingly, even if we read the agreement here to mean that the parties intended for the unallocated support and maintenance obligation to be nonmodifiable for 36 months, it could still be modified under the provisions of the Act. The trial court abused its discretion when it declined to modify Donald's unallocated support and maintenance payments, because as the court found in its order of April 17, 2009, Donald experienced a substantial change of circumstances that warranted a reduction in his payments. Therefore, the court should not have awarded Lisa \$30,750 plus interest for the unpaid unallocated support and maintenance originally called for under the judgment for dissolution.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Kankakee County is reversed and the matter remanded for further proceedings consistent with this order.

¶ 24 Reversed.