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SIXTH DIVISION
March 23, 2018

No. 1-16-2992
2018 IL App (1st) 162992-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
TRAYCEE FOX,)	Circuit Court of
)	Cook County.
Petitioner-Appellant,)	
)	No. 14 D6 30035
and)	
)	
DERRICK FOX,)	Honorable
)	Sharon O. Johnson,
Respondent-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court abused its discretion when it granted respondent's motion to terminate maintenance due to the remarriage of petitioner, because the parties' marital settlement agreement expressly stated that maintenance was non-modifiable; reversed and remanded.

¶ 2 Petitioner, Traycee Fox, appeals a postdissolution order that granted the motion of respondent, Derrick Fox, to terminate maintenance as of January 1, 2016, and ordered petitioner to refund any monies received after that date. Petitioner argues that even though she remarried within two months of the marital settlement agreement being entered, the court erred in terminating maintenance because the marital settlement agreement expressly stated that maintenance was non-modifiable. We agree with petitioner and reverse the trial court's decision.

¶ 3

BACKGROUND

¶ 4 Petitioner and respondent were married on May 23, 2009. Prior to their marriage, petitioner and respondent had one child, born August 17, 2004. Petitioner filed her petition for dissolution of marriage on January 17, 2014, and the parties were awarded a judgment for dissolution of marriage on September 2, 2015.

¶ 5 The judgment for dissolution of marriage reflected that during the marriage, irreconcilable differences caused the irretrievable breakdown of the marriage, and that future attempts at reconciliation would be impractical. Additionally, the judgment for dissolution of marriage incorporated the parties' marital settlement agreement (MSA) that addressed, *inter alia*, the issue of maintenance.

Specifically, Article 6.1 of the MSA provided:

“DERRICK agrees to pay a total of \$12,000 to TRAYCEE as for maintenance.

This amount shall be made in monthly installment payments of \$500.00 per month beginning September 2015 and ending once the \$12,000 has been paid in full.

DERRICK'S obligation to pay and TRAYCEE'S right to receive the payments shall be non-modifiable and shall terminate only upon payment in full.” (Emphasis in original.)

¶ 6 On December 7, 2015, respondent filed a motion for termination of maintenance, containing only the title of his motion and no substantive argument. Respondent was given leave to file an amended motion, and did so on April 14, 2016. Respondent's amended motion argued that maintenance should be terminated because petitioner remarried on November 26, 2015, and requested that petitioner return the funds paid.

¶ 7 On May 11, 2016, petitioner filed her response to respondent's motion to terminate maintenance, asserting that the parties' MSA explicitly stated that maintenance was non-modifiable, and thus respondent should not be able to seek termination.

¶ 8 On June 28, 2016, a hearing was held on respondent's motion to terminate maintenance. A copy of the transcript from that hearing is included in the appendix¹ to respondent's brief. At the hearing, the court expressed its ruling as follows:

“First, this [c]ourt finds that there -- that it is highly likely that Traycee was aware or planning to marry at the time she entered into this agreement in that she married two months after entry of the judgment of dissolution and the marital settlement agreement. Secondly, this [c]ourt finds, as I'm sure counsel is aware that as of January 1, 2016, the Illinois Marriage and Dissolution Act was amended and that amendment specifically provides in 750 ILCS 5/510-C that a payor's obligation to pay maintenance or unallocated maintenance terminates by operation of law on the date the recipient remarries or the date the [c]ourt finds her abdication began.

The payor is entitled to reimbursement for all maintenance paid from that date forward. And I'm paraphrasing. Party receiving maintenance must advise payor of his or her intention to marry at least 30 days before the remarriage unless the decision is made within this time period. In that event he or she must notify the other party within 72 hours of getting married.

¹ We admonish petitioner for including in her appendix materials that were not included in the record on appeal. “[A] reviewing court will not supplement the record on appeal with the documents attached to the appellant's brief on appeal as an appendix, where there is no stipulation between the parties to supplement the record and there was no motion in the reviewing court to supplement the record with the material.” *Pikovsky v. 8440-8460 Skokie Boulevard Condominium Ass'n, Inc.*, 2011 IL App (1st) 103742, ¶ 16. In this case, however, respondent has failed to file a brief, and thus we decline to make any arguments on his behalf. See *People ex rel. Director Department of Corrections v. Booth*, 352 Ill. App. 3d 297, 299 (2004) (“Generally, we will not act as an advocate for an appellee who fails to file a brief.”).

In this case I find, first, that there was a misrepresentation. Secondly, I find that the current statute as amended is applicable at the very least as of January [1], 2016.

Therefore, I'm granting the motion to terminate maintenance and ordering reimbursement of anything after January 1st, any payments made after January [1], 2016.”

¶ 9 On July 27, 2016, petitioner filed her motion to reconsider, asking that the court vacate its June 28, 2016, order that terminated maintenance, because the parties' MSA clearly showed that they agreed maintenance was to be non-modifiable. In an order dated October 28, 2016, the court denied petitioner's motion to reconsider, and stated, “This is a final judgment, and there is no just reason to delay enforcement or appeal or both of this issue.”

¶ 10 Petitioner timely filed her notice of appeal on November 18, 2016. Respondent failed to file his brief, and never sought an extension of his filing deadline. As a result, on February 21, 2018, we ordered this appeal taken on petitioner's brief and the record only.

¶ 11 ANALYSIS

¶ 12 As previously mentioned, we ordered this appeal taken on the petitioner's brief and record only. It is well-settled that “if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal.” *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Here, the record is simple and the trial court's errors are obvious, thus we reach the merits of petitioner's appellate argument.

¶ 13 Petitioner raises the sole argument that the trial court erred when it granted respondent's motion to terminate maintenance and denied petitioner's motion to reconsider, because the parties' MSA expressly stated that maintenance would be non-modifiable and terminated only once paid-in-full.

¶ 14 In general, on review of the circuit court’s decision to modify or terminate maintenance, we will not disturb the court’s judgment absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24. “An abuse of discretion occurs when the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” (Internal quotation marks omitted.) *Id.*

¶ 15 Prior to addressing the circuit court’s ultimate decision to grant the motion to terminate, we must first examine the parties’ MSA. A marital settlement agreement is construed in the same manner as any other contract. *In re Marriage of Doermer*, 2011 IL App (1st) 101567, ¶ 27. As a result, we seek to give effect to the parties’ intent. *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 269 (2003). When the terms of a marital settlement agreement are unambiguous, a reviewing court uses only the plain language of the agreement to determine the parties’ intent. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547 (2010). We review *de novo* the trial court’s interpretation of a marital settlement agreement. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009).

¶ 16 Petitioner argues that the trial court erred when it ignored the language of the parties’ MSA that made maintenance non-modifiable. We agree and find that the parties clearly expressed their intent to make respondent’s maintenance payments non-modifiable.

¶ 17 Section 510(c) of the Illinois Marriage and Dissolution of Marriage Act (Act), in relevant part, states, “Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon *** the remarriage of the party receiving maintenance. *** An obligor’s obligation to pay maintenance or unallocated maintenance terminates by operation of law on the date the obligee remarries.” 750 ILCS 5/510(c) (West 2016).

¶ 18 Here, the unambiguous language of Article 6.1 of the parties’ MSA states:

“DERRICK agrees to pay a total of \$12,000 to TRAYCEE as for maintenance.

This amount shall be made in monthly installment payments of \$500.00 per month beginning September 2015 and ending once the \$12,000 has been paid in full.

DERRICK’S obligation to pay and TRAYCEE’S right to receive the payments shall be non-modifiable and shall terminate only upon payment in full.” (Emphasis in original.)

This language clearly reflects the parties’ intent that maintenance shall be non-modifiable and terminable only upon respondent having paid petitioner the full amount of \$12,000. The parties’ MSA was incorporated into their judgment for dissolution of marriage. As a result, we find that the parties had a written agreement that was incorporated into the judgment for dissolution of marriage, and that unambiguously stated that maintenance would be non-modifiable and non-terminable unless paid in full. According to section 510(c) of the Act, the remarriage of the party receiving maintenance would typically terminate the other party’s obligation to pay future maintenance, “[u]nless otherwise agreed by the parties.” (Emphasis added.) *Id.* In this case, it is clear to this court that the parties “otherwise agreed” their MSA that maintenance would be non-modifiable. Thus, the trial court’s interpretation of the Act and the parties’ MSA was erroneous.

¶ 19 Having determined that the parties “otherwise agreed” in their MSA that maintenance would not be modifiable, we now must turn to whether the trial court’s decision to terminate maintenance was an abuse of discretion. See *Heroy*, 2017 IL 120205, ¶ 24. The court below stated that the new version of the Act, which went into effect on January 1, 2016, required that maintenance be terminated by operation of law on the date of the remarriage of the party receiving maintenance. We find that the court’s interpretation of the Act was unreasonable, and thus an abuse of discretion. Although section 510(c) of the Act provides, “An obligor’s

obligation to pay maintenance terminates by operation of law on the date the obligee remarries,” that language only refers to situations where the parties have not otherwise agreed in writing that maintenance would be non-modifiable, as the parties have done here. It seems to this court that the trial court recited subsequent language from section 510(c) of the Act without considering the opening phrase of that subsection, which states, “Unless otherwise agreed by the parties.”

Therefore, due to the trial court’s unreasonable interpretation and resultant abuse of discretion, we reverse its decision granting respondent’s motion to terminate maintenance and ordering petitioner to refund monies paid.

¶ 20

CONCLUSION

¶ 21 Based on the foregoing, we find that the circuit court’s decision granting respondent’s motion to terminate maintenance was an abuse of discretion. Therefore, we reverse the decision of the trial court that terminated maintenance and ordered petitioner to refund respondent the maintenance monies paid after January 1, 2016. This cause is remanded to the circuit court for further proceedings consistent with this order.

¶ 22 Reversed and remanded.