

NOTICE  
Decision filed 07/09/18. 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.

2018 IL App (5th) 160453-U

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).

NO. 5-16-0453

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

SHELLY HANKO,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Madison County.
	)	
v.	)	No. 10-D-1100
	)	
RODGER HANKO,	)	Honorable
	)	Sarah D. Smith,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.  
Justices Chapman and Overstreet concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court properly interpreted amended marital settlement agreement to require husband to pay wife set amount of maintenance payments beginning with the date of the court’s approval of the new agreement, and husband was not to be given credit for payments already made under original agreement which was superseded by new agreement.
- ¶ 2 Respondent Rodger Hanko (Husband) appeals the order entered by the circuit court of Madison County requiring him to pay to petitioner Shelly Hanko (Wife) additional maintenance payments. We affirm.
- ¶ 3 Wife filed a petition for dissolution of marriage on October 8, 2010. Husband entered his appearance, appearing *pro se*, and consented to an immediate default being

entered against him. The judgment of dissolution of marriage subsequently was entered October 26, 2010. The dissolution order included a marital settlement agreement which the court approved and adopted as the order of the court. In the agreement, Husband agreed to pay Wife as maintenance “the total sum of \$10,000.00 per month for sixty (60) months.”

¶ 4 On November 24, 2010, Wife filed a motion for relief after judgment seeking to have the judgment of dissolution vacated. Wife’s motion was set for hearing for January 26, 2011. On January 26, 2011, a handwritten order was entered which provided: “Petitioner’s Post Trial Motion is granted by agreement as evidenced by the Agreed Amended Marital Settlement Agreement entered into by the parties. The Amended Marital Settlement Agreement is hereby approved by the Court and shall supersede the prior settlement agreement.” The amended agreement added additional provisions concerning the division of assets and awarded a certain bank account and CD to Wife. The agreement also included a new maintenance section which provided: “The Husband shall pay to the Wife the total sum of \$10,000 per month for a period of fifty-three (53) months.”

¶ 5 On April 15, 2015, Wife filed a petition for adjudication of indirect civil contempt alleging Husband unilaterally terminated maintenance prematurely. On June 1, 2016, Husband filed his answer to Wife’s petition claiming that the maintenance amounts of \$530,000 had been paid in full and that he was not in violation of the amended marital settlement agreement. Husband pointed out that he had already made three \$10,000 payments under the original settlement agreement, just three months prior to the amended

settlement agreement being approved by the court. It is undisputed that Husband paid Wife a total of \$530,000 in maintenance. The dispute is whether the payments he made in November 2010, December 2010, and January 2011 should be credited to him toward the 53 payments for which he is responsible under the amended marital settlement agreement, as accepted by the court January 26, 2011.

¶ 6 On June 10, 2016, an evidentiary hearing on Wife's petition was held. On June 17, the court issued its order which found in relevant part: "This Court also interprets the January 26, 2011 Order to indicate the amended [Marital Settlement Agreement] was a new agreement, based on new considerations of the parties. \*\*\* The amended [Marital Settlement Agreement] was effective the date it was filed with the Court, thereby making Respondent responsible for fifty-three payments from the date of the amended [Marital Settlement Agreement]."

¶ 7 Husband argues on appeal that the court erred in construing the language of the amended marital settlement agreement to require Husband to pay the total sum of \$560,000. He first points out that the sum of \$560,000 is contrary to the specific language of the amended agreement which required him to pay a total of \$530,000 in maintenance. He also asserts the reduction in the amount of maintenance to be paid under the new agreement from that stated in the original agreement (\$600,000) reflected the additional amounts of monies and assets being awarded to Wife and served as consideration for the reduction in payments. Husband contends the two documents constituted a single agreement of the parties as to the terms of the dissolution. He further asserts that any ambiguities in the agreements should be construed against the drafters of

the documents, in this instance Wife, particularly since Husband was unrepresented. See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479, 693 N.E.2d 358, 368 (1998).

¶ 8 A marital settlement agreement is a contract between the parties to the agreement, and as such, a court's primary objective is to give effect to the intent of the parties. The language used in the marital settlement agreement generally is the best indication of the parties' intent. *In re Marriage of Coulter*, 2012 IL 113474, ¶ 19, 976 N.E.2d 337. When the terms of the agreement are unambiguous, they must be given their plain and ordinary meaning. *In re Marriage of Dundas*, 355 Ill. App. 3d 423, 426, 823 N.E.2d 239, 241 (2005). Interpretation of the marital settlement agreement is a question of law, and therefore our review is *de novo*. *Coulter*, 2012 IL 113474, ¶ 19.

¶ 9 The court here interpreted the January 26, 2011, order to indicate the amended marital settlement agreement was a new agreement based on new consideration of the parties. It is undisputed that the amended agreement included additional assets awarded to Wife which served as consideration for her agreement to reduce the number of total maintenance payments due from Husband. The amended agreement admittedly did not include any such phrase as Husband owes an *additional* 53 payments. Nor is there any specificity within the document itself as to when the 53 payments were to begin. The January 2011 order, however, accompanying the amended marital settlement agreement clearly states: "The Amended Marital Settlement Agreement is hereby approved by the Court and shall supersede the prior settlement agreement." Supersede means to take the place of, which also means, contrary to Husband's position, both marital settlement agreements are not to be interpreted as one instrument. The amended marital settlement

agreement was a new agreement, based on new consideration of the parties. The amended agreement became effective the date it was filed with the court, thereby making Husband responsible for 53 payments from the date of the amended agreement. Given that Husband only made payments of \$500,000 from the date of the entry of the amended marital settlement agreement, Husband owes Wife \$10,000 a month for three more months or a total of \$30,000. Husband should not receive credit for payments made before the date of the amended marital settlement agreement towards those amounts due under the amended marital settlement agreement. Again, the amended marital settlement agreement is a new agreement which superseded the parties' first marital settlement agreement and took effect the date the court approved and accepted the agreement.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 11 Affirmed.