2019 IL App (2d) 180453-U
No. 2-18-0453
Order filed April 15, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF BARBARA SCHMECHT, Petitioner-Appellee, and KURT SCHMECHT, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 08-D-2089 Honorable Robert E. Douglas, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed respondent's petition to modify maintenance.

¶ 2 In 2010, after a 29-year marriage, respondent, Kurt Schmecht, and petitioner, Barbara Schmecht, divorced. Respondent presently appeals the trial court's dismissal, pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2018)), of his petition to modify maintenance. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2010, the parties, both represented by counsel, entered into a marital settlement agreement, which was incorporated into the dissolution judgment. As is relevant here, the agreement provided that the parties considered it in their best interests to settle the issue of maintenance "now and forever[.]" The maintenance section of the agreement provided that respondent would pay to petitioner $25,000 per year "as and for permanent maintenance and said sum shall be non-reviewable and non-modifiable." Moreover, the agreement specified that respondent's maintenance obligation would terminate upon death, petitioner's re-marriage, or co-habitation with a person of the opposite sex on a continuing conjugal basis.

¶ 5 In January 2018, respondent petitioned to modify maintenance. Specifically, respondent argued that a substantial change in circumstances had occurred in that, after 38 years of employment, he was released from his position. Respondent asserted that petitioner was employed as a flight attendant and no longer required maintenance. Accordingly, respondent petitioned the court to either terminate or modify maintenance.

¶ 6 Petitioner moved to dismiss the petition pursuant to section 2-619 of the Code. She argued that respondent's petition must be dismissed because the plain and unambiguous language of the marital settlement agreement provided, as permitted by section 502(f) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 502(f) (West 2008)), that maintenance would be non-modifiable in amount and duration.

¶ 7 On May 14, 2018, after hearing oral argument, the court granted the motion to dismiss. The court rejected respondent's suggestion that it should consider the intent of the agreement and that, if the parties truly intended to make it non-modifiable, there would have been "something" written into the agreement to make that "absolutely clear." The court asked, "what could be clearer than a sentence that says the maintenance in this case is non-modifiable and non-

reviewable?" It found that the agreement was clear and unambiguous and that there was no reason to go beyond the language of the agreement to ascertain the parties' intent. Respondent appeals.

¶ 8 II. ANALYSIS

¶ 9 On appeal, respondent argues that the court erred in granting the motion to dismiss. In sum, respondent seemingly argues that, had the court considered the statutory factors to impose the award agreed to by the parties, it would have been appropriate under the Act; therefore, by agreeing to an award that would have been properly imposed under the Act, the parties clearly intended to keep the maintenance reviewable upon a substantial change of circumstances. Respondent contends that the fact that a maintenance award is permanent does not preclude modification and, moreover, that sections 502, 504, and 510 of the Act should be read together to permit modifiability here, as the agreement is ambiguous and lacks evidence of intent to preclude modifiability. "Non-modifiability is always negotiated in a very intentional way," respondent asserts. He contends that, had the parties intended non-modifiability, it would have been "more clearly spelled out" in the agreement, and the agreement also would have indicated what respondent was giving up, in exchange for the non-modifiability. Respondent asserts that petitioner is being unjustly enriched, while he received "nothing" in exchange. We reject respondent's arguments.

¶ 10 We interpret *de novo* both a marital settlement agreement and a trial court's section 2-619 dismissal. See *Blum v. Koester*, 235 Ill. 2d 21, 33 (2009); *In re Marriage of Doermer*, 2011 IL App (1st) 101567, ¶ 16. We construe a marital settlement agreement in the same manner as any other contract and ascertain the parties' intent from the language of the agreement. *Blum*, 235 Ill. 2d at 33. "When the terms of the marital settlement agreement are unambiguous, a reviewing

court determines the parties' intent solely from the plain language of the agreement." *Doermer*, 2011 IL App (1st) 101567, ¶ 27. An agreement is unambiguous when the language is susceptible to only one reasonable interpretation. *Id*. A disagreement as to meaning, however, does not render language ambiguous. *Id.*

¶ 11 As respondent notes, modification and termination of maintenance are generally governed by the interplay between sections 502, 504, and 510 of the Act. 750 ILCS 5/502, 504, 510 (West 2008). The Act, as it appeared at the time of the parties' dissolution, allowed parties to agree to non-modifiable and non-reviewable maintenance.[1] Specifically, section 502 provided:

> "(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, *the parties may enter into a written or oral agreement containing provisions for *** maintenance ****.
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> (b) *The terms of the agreement*, except those providing for the support, custody and visitation of children, *are binding upon the court* unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

[1] Indeed, the Act continues to provide that parties may agree to non-modifiable and non-reviewable maintenance. Presently, section 502(f) provides, in relevant part: "(f) *** The parties may provide that maintenance is non-modifiable in amount, duration, or both. If the parties do *not* provide that maintenance is non-modifiable in amount, duration, or both, *then* those terms are modifiable upon a substantial change of circumstances." (Emphases added.) 750 ILCS 5/502(f) (West 2018).

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> (f) 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." (Emphases added.) 750 ILCS 5/502 (West 2008).

¶ 12 Section 504(a) of the Act addressed factors that a court must consider when fashioning a maintenance award and explained that the court could grant a "temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just ***, in gross or for fixed or indefinite periods of time." 750 ILCS 5/504(a) (West 2008). Finally, section 510(a) of the Act provided that, except as otherwise provided in section 502(f) (*i.e.*, again, providing that the judgment may expressly preclude modification of terms), "[a]n order of maintenance may be modified or terminated only upon a showing of a substantial change in circumstances" and that, to modify maintenance, the court must again consider the section 504(a) factors. 750 ILCS 5/510(a) (West 2008). We further note that section 510(c) provided conditions under which maintenance obligations terminate, *unless* otherwise agreed to by the parties in a written agreement set forth in the judgment. 750 ILCS 5/510(c) (West 2008).

¶ 13 Respondent does not argue that the agreement's maintenance provision is *inconsistent* with the Act's language, as in effect at the time of dissolution (or now). Rather, he argues that, because the agreement's language providing for permanent maintenance is *consistent* with the Act, the parties therefore implicitly agreed that *all* provisions of the Act should apply to permit review and modification. Respondent's arguments simply do not acknowledge the plain language of the Act, the plain language of the agreement, and controlling caselaw. As noted

above, the Act's provisions, as summarized above, permit parties to agree to maintenance provisions and to expressly preclude modification of those terms, such an agreement is binding upon the court (unless the court finds it unconscionable), and the factors for court modification of maintenance apply *unless* otherwise agreed to by the parties.

¶ 14 Respondent cites *Blum*, where our supreme court held that the trial court exceeded its authority when it made a maintenance award non-modifiable and non-reviewable. *Blum*, 235 Ill. 2d at 43. The court noted that modifiability is desirable because "life changes." *Id*. However, respondent conveniently omits that the *Blum* court not only reiterated that, under section 502(f), "parties to a marital settlement agreement may agree to make maintenance non-modifiable and non-reviewable," but its holding in that case expressly found that the trial court erred in ordering the maintenance award non-modifiable and non-reviewable "*absent express agreement* by the parties." (Emphasis added.) *Id.* at 42-43 (also citing, *In re Marriage of Kozloff*, 101 Ill. 2d 526, 533-34 (1984) ("holding that denial of petition for modification of maintenance was proper when the parties' agreement prohibited modification of maintenance"); see also *Doermer*, 2011 IL App (1st) 101567, ¶ 28 (trial court properly granted motion to dismiss a petition to modify maintenance; plain language of the agreement provided that maintenance was non-modifiable and the petitioner, therefore, had no statutory right to modify the award). Here, respondent never argued, and the court did not otherwise find, that the maintenance agreement was unconscionable. Indeed, respondent concedes that the maintenance agreed to was appropriate under the Act. Further, the Act clearly permits agreements to make maintenance non-modifiable and non-reviewable. Respondent's arguments simply fail.

¶ 15 Respondent notes that the fact that a maintenance award is "permanent" does not preclude modification. While we have no issue with this concept, generally, the cases that

respondent cites as support for this proposition, *In re Marriage of Arvin*, 184 Ill. App. 3d 644 (1989) and *In re Marriage of Gallagher*, 256 Ill. App. 3d 439 (1993), are clearly distinguishable from the case before us. In those cases, the permanent maintenance awards remained subject to review, as the parties there did not, unlike here, expressly *agree* that the permanent maintenance would be non-modifiable and non-reviewable. Indeed, the court in *Arvin* even noted that "[t]he language of the agreement does not expressly preclude or limit modification of the terms of the judgment" (*Arvin*, 184 Ill. App. 3d at 651) and *Gallagher* concerned a court's award, not even an agreement between the parties (*Gallagher*, 256 Ill. App. 3d at 440). Respondent and petitioner here *did* expressly agree to permanent, non-modifiable, non-reviewable maintenance in the amount of $25,000 per year, with the agreement providing that the sum would reflect "permanent maintenance *and* said sum shall be non-reviewable and non-modifiable." (Emphasis added.)

¶ 16 Respondent's final arguments include his position that "[n]on-modifiability is always negotiated in a very intentional way" and that, had the parties intended non-modifiability, it would have been "more clearly spelled out" in the agreement. We agree with the trial court's assessment that nothing could be more clear and unambiguous than the agreement's language that maintenance was to be non-modifiable and non-reviewable. Adding more language does not necessarily make a contract clearer; indeed, it likely often does the opposite. Respondent contends that, had the parties intended non-modifiability, the agreement would have stated what respondent was giving up in exchange for the non-modifiability. Respondent asserts that petitioner is being unjustly enriched, while he received "nothing" in exchange. As the parties' intent is expressed through the agreement's unambiguous language, we need not further delve into intent. We note, however, that, at a minimum, respondent received from the non-

modifiability provision petitioner's agreement to not petition for increased maintenance in the future.

¶ 17 III. CONCLUSION

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

¶ 19 Affirmed.