2019 IL App (5th) 170332-U

NO. 5-17-0332

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
CAROL R. NOTESTINE, n/k/a	)	Madison County.
CAROL R. THOMPSON,	)	
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 10-D-620
	)	
PATRICK A. NOTESTINE,	)	Honorable
	)	Thomas W. Chapman,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in denying Wife's motion to enforce the parties' marital settlement agreement involving a refund of taxes covering the year 2010.

¶ 2 This appeal arises out of a judgment entered on June 2, 2017, by the circuit court of Madison County on a motion to enforce a marital settlement agreement filed by Carol R. Notestine, now known as Carol R. Thompson, petitioner-appellant (Wife). We reverse and remand for entry of a new judgment in favor of Wife.

¶ 3 On January 11, 2011, a judgment of dissolution of marriage was entered between the parties, Wife and Patrick A. Notestine, respondent-appellee (Husband), which included a settlement agreement approved by the trial court. One of the marital assets covered under the settlement agreement was a business known as Custom Steel Processing, Inc. Custom Steel was awarded to Husband contingent upon his payment of $750,000 to Wife within 60 days. Husband complied with the contingency, and Wife relinquished all right, title, and interest in Custom Steel.

¶ 4 Some five years later, Wife discovered the parties were scheduled to receive tax refunds after filing amended joint returns for the tax years 2007, 2009, and 2010. On November 14, 2016, Wife filed a motion to enforce the settlement agreement between the parties because Husband did not give her one-half of the marital tax refunds. Husband claimed he was entitled to the full refund because Custom Steel caused the refund and he alone paid the tax liabilities associated with Custom Steel. Because Custom Steel is an S corporation, Custom Steel does not pay taxes itself. All income and deductions pass through to its shareholders, who report the income and deductions on their own income tax returns. See 26 U.S.C. § 1363. Accordingly, the parties, as shareholders of Custom Steel, personally paid the taxes resulting from Custom Steel's business.

¶ 5 The parties agreed that their joint 2007 and 2008 federal tax returns were audited with respect to income and expenses of Custom Steel. Following the audits, the parties actually incurred and owed an additional tax liability of approximately $492,000 for the years 2007 and 2008. This additional tax liability resulted from a bad debt that was improperly recognized in the incorrect tax years. Husband personally paid the $492,000

additional tax liability due resulting from the audits. As part of agreement with the Internal Revenue Service, the parties' amended returns for tax years 2007, 2009, and 2010 were permitted to recast the bad debt of Custom Steel's in the correct tax years. This recasting resulted in a reduction of the total tax liability assessed in those years by approximately $373,921, which was refunded to Husband. Even with the refund, however, Husband still suffered a loss of approximately $120,000.

¶ 6 The court ruled that when one spouse assumes and pays the entire burden of a substantial marital tax liability incurred post dissolution, which results in a refund that only partially compensates him or her, leaving the spouse paying the taxes a negative net of $120,000, the other spouse having paid none of the tax liability has no valid claim to any part of the refund. Accordingly, the trial court denied Wife's motion.

¶ 7 Wife argues on appeal that the court erred in awarding Husband all of the joint tax refund received after the dissolution of their marriage. She asserts the tax refund was marital property, and their settlement agreement states that refunds were to be split on an even basis. We agree with Wife in part. Wife fails to acknowledge that the parties' agreement is limited to the year 2010 only.

¶ 8 Rules of contract construction are applicable to the interpretation of provisions in a marital agreement. *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 658 (2002). The primary objective is to effectuate the intent of the parties, and that intent must be determined only by the language of agreement itself. *Carrier*, 332 Ill. App. 3d at 658. Courts review the interpretation of marital settlement agreements contained in dissolution decrees in the same manner as other contracts, *i.e.* as a question of law to be reviewed

de novo. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017 (2011); *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 305 (2002).

¶ 9 At the March 14, 2017, hearing on Wife's motion, the parties stipulated that they were entitled to a tax refund totaling $373,921 as a result of the amended returns filed for tax years 2007, 2009, and 2010. As part of the agreement with the Internal Revenue Service, the parties' amended returns for tax years 2007, 2009, and 2010 were permitted to recast a bad debt of Custom Steel's in the correct tax years. This recasting resulted in a reduction of the total tax liability assessed in those years by approximately $373,921. The total amount was refunded to Husband. The total amount refunded, however, fell short of offsetting the additional tax payment.

¶ 10 Under the terms of the settlement agreement, Wife had no obligation to pay any tax liability for Custom Steel. Accordingly, when an audit revealed the parties owed an additional tax liability, Husband alone assumed responsibility. Both parties knew there may be tax consequences in transferring all of the interest in the steel processing company. Paragraph Q of the parties' settlement agreement specifically addressed the issue of taxes and how to manage either a liability or refund. Paragraph Q provides:

> "Q. The Parties further agree, for purposes of State and Federal Income taxes for the year 2010, the parties will file joint Federal and State Income tax returns or any other returns required by the State of residence. Any taxes due on Federal and/or State income tax returns, shall be paid by [Husband]. In the event there is a refund from the Federal and/or State Income tax returns, the parties agree to split the same on an even basis."

¶ 11 The general rule articulated in *In re Marriage of Ormiston* states that federal income tax refunds received for income earned during a marriage constitute marital property subject to division, regardless of when such refunds are received, whether before or after the marriage is dissolved. *In re Marriage of Ormiston*, 168 Ill. App. 3d 1016, 1018-19 (1988). The parties are free, however, to contract otherwise. Here the parties did just that. Wife believes, based on paragraph Q, that she is entitled to one half of the total refund. Husband initially believed Wife was not entitled to any of the refunds given that the liabilities exceeded the total amount refunded. He now concedes, however, that under the parties' agreement, Wife is entitled to one half of the refund for the tax year 2010. We agree with Husband that paragraph Q of the parties' settlement agreement specifically included the phrase "taxes for year 2010" showing an intent to limit the provisions contained therein to only the year 2010. We do not agree with Wife that the language of the agreement is ambiguous. Ambiguity exists where the language of the agreement is reasonably susceptible to more than one meaning. The language is not characterized as ambiguous merely because the parties do not agree on its meaning. *In re Marriage of Druss*, 226 Ill. App. 3d 470, 475-76 (1992). Again, the parties' agreement is limited to 2010 only. The refund for 2010 is listed as $43,958. Under the terms of the agreement, Wife therefore is entitled to a total of $21,979 from Husband as her share of the refund. We therefore reverse the decision of the circuit court of Madison County and remand this cause for entry of judgment in favor of Wife in the amount of $21,979.

¶ 12 Reversed and remanded for entry of judgment in accordance with the dictates of this disposition.