

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA MARIE MOORE,

Plaintiff-Appellee,

v

ALAN S. MOORE,

Defendant-Appellant.

UNPUBLISHED
November 20, 2003

No. 241006
Saginaw Circuit Court
LC No. 92-052661-DO

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying his motion to modify or terminate alimony. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced pursuant to a consent judgment entered March 15, 1993. The judgment provided that defendant would pay plaintiff \$300 alimony bi-weekly, subject only to plaintiff's death, remarriage, or living with a male companion for two consecutive years. The judgment further provided that the alimony is not modifiable or subject to further order of the court.

Plaintiff is legally blind, and was unsuccessful in obtaining employment during the course of the marriage. In 1994, she was hired by the U.S. Postal Service, and is now earning \$40,000 per year. In July 2001, defendant moved to terminate or modify alimony. After a hearing, the court denied the motion without comment in an April 10, 2002 order.

Normally, judgments are final and binding and preclude relitigation of matters already decided. *Staple v Staple*, 241 Mich App 562, 572; 616 NW2d 219 (2000). The principle of finality does not apply to settlements of alimony and child support arrangements. *Id.* MCL 552.28 provides that courts may modify judgments for alimony upon the petition of either party. Although the statute clearly provides for modification, parties may structure an alimony agreement that is not subject to future modification. *Id.* at 578. If the parties to a divorce agree to waive the right to petition for modification, and agree that the alimony provision is binding and nonmodifiable, and this agreement is contained in the judgment of divorce, the agreement will constitute a binding waiver of rights under MCL 552.28. *Id.* at 581.

Here, the judgment of divorce clearly provided that except for plaintiff's death, remarriage, or cohabitation with a male, alimony is not modifiable or subject to further order of the court. The parties effectively waived their right to seek modification under MCL 552.28. The trial court did not err in denying the petition to terminate or modify alimony.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly