COURT OF APPEALS
DECISION
DATED AND FILED

October 24, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP472 **Cir. Ct. No. 2009FA36**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

JENNIFER L. REETZ,

PETITIONER-RESPONDENT,

V.

RYAN J. REETZ,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Reversed and cause remanded*.

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. Ryan Reetz appeals an order denying his motion to modify his child support obligation. The circuit court denied Ryan's motion to modify his child support obligation based on its construction of the

marital settlement agreement entered into by Ryan and his former wife, Jennifer Reetz.[1] Ryan argues that the circuit court erred when it denied his motion to modify his child support obligation because the circuit court misconstrued a subsection of the marital settlement agreement. We agree, and therefore reverse and remand.

BACKGROUND

¶2 Ryan and Jennifer were married in 2000. Two children were born of the marriage. Ryan and Jennifer divorced in 2009. The terms of the divorce were set forth in a marital settlement agreement. The marital settlement agreement set Ryan's child support obligation at $2,700 per month. Subsection II.A.A.(f)[2] of the marital settlement agreement specified the circumstances under which Ryan and Jennifer could seek to modify child support:

> Child support shall not be reviewed and modified unless there is a very substantial change in income or employment of the parties.… For any loss of employment it will only be considered if it is through no fault of the party with the employment loss.… The term, "very substantial" shall be defined to mean at least a 20% change in what the child support order should be.

The circuit court approved the marital settlement agreement and incorporated it into the judgment of divorce.

[1] As Ryan and Jennifer share the last name Reetz, we will refer to them by their first names to avoid confusion.

[2] We will refer to this portion of the marital settlement agreement as "subsection (f)."

¶3 At the time of the divorce in 2009, Ryan owned the Thorson-Reetz Funeral Home and worked as the funeral home's director. Ryan's net income was approximately $165,000 per year.

¶4 In 2010, the funeral home experienced a decline in business. Business continued to decline to the point where, in 2012, Ryan closed the funeral home and filed for Chapter 7 bankruptcy. After closing the funeral home, Ryan found employment as the director of another funeral home, at an annual income of $50,000.

¶5 Ryan moved to modify his child support obligation based on his decreased income. The circuit court held a hearing on Ryan's motion. At the hearing, Jennifer argued that subsection (f) of the parties' marital settlement agreement barred Ryan from seeking to modify his child support obligation because his job loss was not "through no fault" of his own. Ryan argued that he lost his job "through no fault" of his own, and that his child support obligation should be reduced to $492.02 per month based on his decreased income.

¶6 In the process of deciding Ryan's motion to modify his child support obligation, the circuit court interpreted subsection (f) of the marital settlement agreement. The circuit court determined that "the plain language [of subsection (f)] says that any loss of employment has to be through no fault of the party with the employment loss." The circuit court concluded that Ryan was "not blameless" in losing his employment, and therefore found that subsection (f) of the marital settlement agreement barred Ryan from seeking to modify his child support obligation. The circuit court did not address whether Ryan had shown a "very substantial change in income" sufficient to warrant a modification of his child

support obligation. The circuit court denied Ryan's motion to modify his child support obligation, and Ryan now appeals.

DISCUSSION

¶7 On appeal, the parties dispute whether the circuit court correctly construed subsection (f) of the marital settlement agreement, which, as we have stated, was incorporated into the judgment of divorce.[3] The construction of a divorce judgment is a legal issue that we review independently of the circuit court. ***Waters v. Waters***, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655. We apply the rules of contract construction to a divorce judgment, including where, as here, "the divorce judgment is based on the parties' stipulation." ***Id.***, ¶6. As with a contract, if the terms of the divorce judgment are unambiguous, we interpret the divorce judgment according to its literal terms. *See* ***Tufail v. Midwest Hospitality, LLC***, 2013 WI 62, ¶26, 348 Wis. 2d 631, 833 N.W.2d 586 ("Where the terms of a contract are clear and unambiguous, we construe the contract according to its literal terms.").

¶8 Upon independent review, we agree with Ryan's argument that subsection (f) of the marital settlement agreement is clear and unambiguous in setting forth two distinct circumstances upon which the parties may seek to modify child support, namely, upon a very substantial change in income, or upon a very substantial change in employment. And subsection (f) then goes on to qualify that

[3] The parties' arguments largely focus on the "loss of employment" and "no fault" terms in subsection (f). Because we decide the case on other grounds, we do not address these arguments.

the change in employment must be at no fault of the party experiencing the change in employment.

¶9 Subsection (f) provides that Ryan and Jennifer may seek to modify their child support obligation if "there is a very substantial change in income ***or*** employment of the parties." (Emphasis added.) The placement of the word "or" between "change in income" and "employment" in this clause is significant. The AMERICAN HERITAGE COLLEGE DICTIONARY 959 (3rd ed. 1993) contains a definition of "or" as being a conjunction that is commonly "[u]sed to indicate the second of two alternatives." Applying this common meaning of "or" to the parties' marital settlement agreement, we conclude that subsection (f) unambiguously sets forth two alternative circumstances under which Ryan and Jennifer may seek to modify their child support obligation: ***either*** upon showing a very substantial change in income, ***or*** upon showing a very substantial change in employment.

¶10 If a party makes the latter showing, of a very substantial change in employment, subsection (f) provides that the change must be at no fault of the party experiencing the change in employment. Jennifer argues that the "no fault" qualification applies to both the "very substantial change in income" provision and the "loss of employment" provision of the marital settlement agreement. Specifically, she contends that: "[I]f the 'no fault' provision is to have any meaning, it must encompass any loss of income resulting from a loss of employment." However, subsection (f) of the marital settlement agreement is not written to reflect Jennifer's interpretation. To the contrary, the plain language of subsection (f) does not attach the "no fault" qualification to the "very substantial change in income" provision. Rather, the sentence specifies that the "no fault" qualification applies only to the "loss in employment" provision. Consequently,

under the language used by the parties, the "no fault" qualification does not apply to the "very substantial change in income" provision.

¶11 We therefore conclude that the circuit court erred in its construction of subsection (f) of the marital settlement agreement by focusing solely on the change in employment provision and ignoring the change in income provision. Accordingly, we reverse the circuit court's order and remand with instructions to address the "very substantial change in income" provision and apply the marital settlement agreement as interpreted in this opinion.

CONCLUSION

¶12 For the reasons set forth above, the circuit court's order denying Ryan's motion to modify child support is reversed, and the cause is remanded for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports.