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DIVORCE DIGEST™

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Child Support of $11,000 Monthly and Trusts of $4,500,000

The parties met in Bangkok, Thailand. The father was 53 years of age at the time and the mother was 23 years of age. They had triplets after undergoing an In Vitro Fertilization treatment. Unbeknownst to the mother, the father was married. She eventually sought to establish jurisdiction Illinois in order to enforce a Thai court support order and to obtain an increase in child support. Judge Jeanne Cleveland Bernstein accepted jurisdiction and increased child support from approximately $1,500 per month for the three children (the original order was in Thai baht) to $33,000 monthly for three children ($11,000 for each child). She also ordered that a trust be established for the children with a deposit of $1.5 million to each of their trusts.

The mother was represented by Gemma Allen and Michael J. Levy of Allen & Glassman, Chartered. The father was represented by John M. D'Arco, Enrico Mirabelli and Matthew D. Elster of Beermann LLP and in addition, at later stages, by David F. Wentzel of Wentzel Law Offices. The children were represented by Michael I. Bender of Caesar & Bender, LLP as Guardian ad Litem and Howard H. Rosenfeld and Vanessa L. Hammer of Rosenfeld Hafron Shapiro & Farmer as attorney for the child.

The parties began a relationship in Bangkok, Thailand in 2001, when the mother was 23 years of age and the father was 53 years of age. The father was a graduate of Harvard and received his masters from the University of Chicago. The mother appeared to be of working class Thai heritage. The parties had approximately a 10 year relationship. They met on an average of 3 to 4 times a year when the father would visit Thailand. At some point, the father entered into a Thai religious marriage ceremony with the mother. (There were photographs showing that the ceremony was public and allegedly the father gave the mother's father a dowry payment). The father did not register the marriage so it was not considered a valid marriage in Thailand. The parties determined that they should have children together and underwent IVF treatment using the father's sperm and the mother's eggs. In November 5, 2008, the mother gave birth to the parties' triplet sons. In order to acknowledge his parentage, the father sent his passport to Thailand and insisted the three boys be given his family names and that they receive United States citizenship.

It appeared from e-mails, in evidence, that the father promised the mother many things in order to induce her to have children with him, including buying her a house, sending the children to the best private schools, and providing all three with trust funds for their college educations. The father sent the mother funds to purchase a house, a commercial building and some vacant land. He also gave her the use of his credit card.

Sometime in 2009, the father appeared to have a change of heart and he stopped supporting his children, forcing the mother to file a lawsuit against him in Thailand for child support. The father did not personally appear in the Thai court, but, was represented, at all times, by counsel. The Thai court found him to be the father of the children, as a DNA test confirmed his parentage.

On December 21, 2010, the Thai court ordered the father to pay a monthly sum for the support of his children, the equivalent of $500 per month for each of the then two year old triplets. The father appealed the Thai court decision, and, when the lower court decision was affirmed, he appealed to the Supreme Court of Thailand which also affirmed the decision of the two lower courts. During this period of time, the father did not

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comply with the Thai order and refused to pay any child support. The father's willful refusal to comply with the Thai court order compelled the mother to file a cause of action in the Circuit Court of Cook County (where the father was a resident) asking to register the Thai Judgment in Illinois for enforcement purposes (among other requests). The Thai Judgment was duly registered in the Illinois court on March 18, 2013. The father appealed that order, and, on December 2, 2016, the Appellate Court, First District of Illinois affirmed the lower court's decision, allowing the registration and finding that the Thai decision was res judicata.

The mother then moved for the Circuit Court of Cook County to modify the child support amount, as the Thai award was insufficient for support of the three minor children. Shortly thereafter, the father filed suit in England against the mother, (where she now resided having married a British citizen), claiming she had violated an agreement between the parties to keep their relationship private. There was a finding against the father in that lower court, which the father appealed to the High Court of Justice, Queen's Bench Division, Media and Communications List. In a very lengthy and detailed decision, the High Court Justice found against the father and denied his appeal.

The instant case proceeded in this court, from time to time, until on its own motion, the court appointed Michael I. Bender as Guardian ad Litem. (The court originally appointed him as Child Representative, but, at the request of the father the appointment was modified to that of GAL). The GAL traveled to England to interview the children, their parents and to observe their living conditions and determine the needs of the children. Upon receiving the GAL report, the court learned of the difficult condition of the children.

The Thai court had issued a Certificate of Finality in February 2016, and it was clear that the father would not comply with any Thai order (as he had not done so in the past). The British court declined to hear the case. This court determined that there was no other court where the children could be granted the relief they required. Therefore, the court took jurisdiction for the purpose of modification of child support. This decision was made after hearing about the condition of the children in England, of their needs for medical treatment, tutors and their inability to participate in extracurricular activities due to a lack of resources.

During the nine days of testimony, the father continued to raise the issue that the mother was illegally in the United Kingdom and would be deported. The court continued to remind the father that the best interests of the children would be the major factor as to child support in the court's decision. Further, the father had already been found to be the biological father and therefore, owed the children the obligation of support. The father's attorney sought to exclude the GAL from the hearing since the GAL would be a witness. The court therefore appointed Howard Rosenfeld as attorney for the children.

In the case at bar, neither the parties nor their children were in Thailand. In fact, the mother and her children moved to Great Britain in 2013 and had been out of Thailand for nearly six years. The mother was a nonresident of Illinois, living in Great Britain and the father was a resident of Illinois, had filed his appearance and actively participated in the case.

The Illinois court was able to take jurisdiction to modify the Thai Judgment when all the [required] conditions were met and no one resided in Thailand. As of March, 2013, the

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mother and the triplets left Thailand and moved to the U.K. The mother testified that she was prohibited from working in the U.K. because she was an "overstayer". This was not challenged by the father. The triplets' mother and stepfather devoted all their free time and the vast majority of their assets to raising these boys. The mother stayed home so that she could help the boys in whatever way was needed, including, but certainly not limited to, taking them to doctor's appointments, taking them to school, and taking them to the park where they got to watch other children participate in club activities. It would not have been in the triplets' best interest to change something that had been working so well and declined to obligate the mother to obtain full time employment especially since it would have been illegal.

The father was extraordinarily, if not vexatiously, litigious. He had appealed the decision finding him to be the father of these children to the Supreme Court of Thailand. He had sued the mother in England concerning a Facebook page that she had up for a couple of months and took down (he claimed it was an invasion of his privacy). When he lost that case he filed an appeal and he had recently lost that appeal and testified that he had deposited $25,000 with an attorney to take that matter up to the next higher court in Great Britain. When the Illinois court registered the Thai decision for the purposes of enforcing the child support, he appealed that matter. He also lost that appeal.

During the current litigation, he had appealed two separate issues and had asked the Supreme Court of Illinois for a supervisory order. When asked if there was a limit to the amount of funds that he would spend litigating this case in order to preclude having to support his sons, he answered in the negative. On the last day of testimony, he indicated that he would continue to litigate this issue until "he receives justice" which the court took to mean his not being obligated to support his sons.

The father had caused amendments to be executed changing the definition of descendants in several trusts of which he was the beneficiary and trustee. These trusts provided for the remaining corpus to go to his "legitimate" descendants thereby excluding his triplet sons. In addition, the father testified that he had, at the age of 71, a child with his current wife (she was 66) so that he would have a descendant as beneficiary of these trusts.

The father had commenced an "illusory" course of conduct designed to remove all of his assets from himself and transfer them to his wife. He had produced several promissory notes one of which transferred all of his assets to his wife in exchange for "legal advice and service" she had rendered to him. The father's wife was not an attorney. Although the promissory notes were years old, he had done almost nothing to actually transfer funds to his wife other than $200,000 into an entity owned solely by his wife. He had only created those notes in an effort to reduce his ability to pay child support.

The court found that due to his advanced age and his obsessive tendency to deny the parentage of the triplets and had refused to pay support, that should the court fail to establish a 503(g) trust not only would he make no provisions for these children in the event of his demise (thereby engendering further litigation in the probate court) but, would take active steps to ensure that the triplets were omitted as his descendants under the original terms of those trusts.

The mother testified in a clear manner. Her speaking and understanding of verbal English

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was good. Several times she apologized that her ability to read English was not good. She was credible, but not sophisticated or knowledgeable and so she deferred to her husband, which led the court to an understanding about why, as a very young woman, she would fall victim to a much older wealthy man like the triplets' father.

The father was not credible. For instance, notwithstanding the facts proven and affirmed in the Thai courts, he incessantly claimed that the triplets were not his children. In addition, he claimed on his Financial Affidavit dated October 26, 2017 that the mother had fraudulently referred to herself as his "wife" when he had himself referred to her as his "own true wife" and that the children were legitimated after a fraudulently obtained court order in Thailand. The father chose not to present himself to the Thai court, but was represented by attorneys. His original claims were "he had not had a sexual relationship with [the mother] during her fertility period", followed by his total denial that he had participated in the IVF procedure, his sperm had been switched in the clinic and that the DNA test was somehow faulty. He participated through counsel all the way to the Thai Supreme Court.

Judge Bernstein ordered the father to pay the mother the sum of $11,000 per month as and for child support for each of the parties' three children through each child's minority with the age of majority being 20 years of age. Child support was retroactive to April 1, 2013. 503(g) trusts were to be set up for each child within 21 days of entry. The father was to deposit $1,500,000 into each of the boys' trusts. The funds would be used for child support, actual private medical and dental insurance payments as well as for extracurricular activities. The trust corpus amounts were slightly less that the full amount the father would be required to pay over the years, but interest was to accrue in a sufficient amount to cover the differences.

Michael Bender and the mother's current husband were to be co-trustees. The mother's husband was to continue as co-trustee, so long as he was married and cohabiting with the mother and the three children. In the event that the mother's husband was no longer eligible to act as trustee, Michael Bender was to select a co-trustee.

To read the entire 16 page Judgment, visit www.illinoisdivorcedigest.com.

Comments of Attorney Gemma Allen:
"Regarding the litigiousness of the father, and the devastating legal onslaught on the mother of his children whom he pledged to and seemingly did dearly love until his America wife found out, it is not cited in the opinion but it is in the record that in addition to the Thailand litigation history and the father's avoidance of child support and his costly pursuit in England of an alleged privacy right which was twice denied, there was still another lawsuit."

Comments of Attorney Howard Rosenfeld:
"In the first paragraph it should be the father was and still is a married man. The father sought out and insisted on a DNA test because he needed it to obtain passports for the children. Upon the father's wife finding out about that is when he stopped. The Thai court never had evidence of the father's financial situation, never submitted. The father's wife also sued the mother in the Thai court, which was dismissed. The mother had exhausted all of her funds defending the various lawsuits by the wife and father. The father took the 5th amendment on questions concerning his tax return. The mother testified by Skype as she had to remain in England because of immigration issues."

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Sanctions Denied

The Judgment for Dissolution of Marriage was entered on June 7, 2017. Also entered on June 7, 2017 was a Reciprocal Agreed Protective Agreement and Order. The husband filed an Amended Post-Decree Petition for Sanctions. The husband sought sanctions against the wife and claimed the wife's disclosure of a deposition transcript of his mistress to the mistress' ex-husband, to be a violation of a protective order entered by agreement that "confidential material" would not be disclosed. The wife filed and presented a Motion for Judgment on the pleadings claiming that husband's request as having no basis. Judge Matthew Link granted the wife's Motion for Judgment on the Pleadings and denied the husband's request for sanctions.

The wife was represented by Joshua M. Jackson and Jacqueline S. Breisch of Schiller, DuCanto & Fleck. The husband was represented by Molshree Sharma and Reuben A. Bernick of Boyle, Feinberg, Sharma, P.C.

The June 7, 2017 Order stated in relevant parts, "all…information… produced personally by… any other person… concerning either party's employer, their income, ownership, or any other aspects of either party's compensation package… shall be 'Confidential Material' and shall not be disclosed to any other person."

The wife admitted that she provided a transcript of the deposition of the husband's married colleague, conducted during pre-decree discovery proceedings, to the colleague's ex-husband. The wife provided him with the deposition transcript in the summer of 2017. The wife testified that she gave him the deposition transcript because she wanted him to know the truth about the colleague's relationship with the husband. The wife testified that she did not believe that he would have shared the deposition transcript with anyone. The wife testified that she did not ask him to sign an acknowledgment to be bound by the terms of the order because she did not believe the deposition transcript contained any confidential information.

The husband testified that he did not know what his colleague's ex-husband had done with the deposition transcript and did not know whether he or the wife had shared the deposition transcript with anyone else. The husband had not suffered any damages as a result of the wife's disclosure of the deposition transcript to the colleague's ex-husband. He testified that he would like to have known what the colleague's ex-husband had done with the deposition transcript and that he would like him to be prevented from further disseminating the deposition transcript.

The husband filed an Amended Post-Decree Petition for Sanctions on December 21, 2017. Pursuant to his Amended Petition, the husband petitioned the court to impose sanctions upon the wife for violation of the order and for repeated harassment against the husband. The husband's Amended Petition included the following prayers for relief: that the court find that the wife violated the order; that the court find that the wife's violation of the order was willful, contumacious and sanctionable; that the court impose an appropriate sanction, including without limitation the attorney's fees and costs that the husband had incurred and would be forced to incur in the preparation, discovery and litigation of the instant petition; that the court order the wife to immediately ensure a return of the deposition transcript in violation of the order and other confidential material released in violation of the order, and to advise parties to whom she had released such information to avoid further dissemination and to destroy any copies made thereto; that the court impose appropriate

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sanctions upon the wife in the event the deposition transcript released was further disseminated by the individuals to whom she disclosed it; and, for such other and further relief as the court may have found to be just.

The husband did not file a petition for a rule to show cause. Additionally, at the hearing, the husband, through counsel, advised the court that he was not seeking a finding of contempt against the wife. Furthermore, the husband failed to cite any other authority, rule, or statute to support his request for the court to impose sanctions upon the wife. Notwithstanding the fact that the husband failed to file a petition for a rule to show cause and conceded that he was not seeking a finding of contempt, the court acknowledged that the court had the inherent authority to enforce its orders. "It is an elementary principle of law that judicial power essentially involves the right to enforce the results of its own exertion." *American Soc'y of Lubrication Eng'rs v. Roctheli*, 249 Ill. App. 3d 1038, 1042 (1st Dist. 1993) *citing Cities Service Oil Co. v. Oak Brook*, 84 Ill. App. 3d 381, 384 (2nd Dist. 1980).

The order did not expressly prohibit the disclosure of transcripts of depositions conducted in this matter. Therefore, the issue was whether the deposition transcript contained confidential material as defined in the order. "An agreed order is considered to be a contract between the parties; its construction is governed by principles of contract law." *Draper & Kramer, Inc. v. King*, 2014 IL App. (1st) 132073, Para. 27. Courts also interpret phrases within a contract in a manner to give a common sense meaning to the whole contract. *Hoyt v. Continental Casualty Co.*, 18 Ill. App. 3d 599, 600 (2nd Dist. 1974).

"A contract term is ambiguous if it can reasonably be interpreted in more than one way due to the indefiniteness of the language or due to it having a double or multiple meaning." *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 357-358 (1st Dist. 2005) citing Zurich Midwest, Inc. v. St. Paul Fire & Marine Insurance Co., 159 Ill. App. 3d 961, 963 (1987). A court may consider extrinsic evidence to ascertain the parties' intent if the language of the contract is ambiguous. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 288 (1990). Additionally, "[A]n injunction order cannot support a finding of contempt unless it sets forth with certainty, clarity and conciseness precisely what actions are required.: *O'Leary v. Allphin*, 64 Ill. 2d 500, 513-514 (1976).

The deposition transcript contained no information concerning the husband's income, ownership or compensation package. The order's prohibition against disclosing information "concerning either party's employer" was ambiguous and lacked certainty and clarity.

The wife testified that the order was similar to an agreed order the parties entered pre-decree in December of 2014, which was entered after all discovery had begun and was intended to keep certain information about the husband's compensation confidential.

The husband testified that he signed the order because he did not want confidential information about his employer to be disclosed to third-parties. He testified that the order was intended to protect information related to his employment at A.T. Kearney including his income, ownership and compensation package. The husband testified that much of the information contained within the deposition transcript was public knowledge and was available on his LinkedIn profile, on his curriculum vitae, and on his company's website. The only information contained within the deposition transcript concerning the husband's

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employer was public information, non-substantive information and information that was not actually confidential.

The order was akin to a confidentiality agreement and Illinois courts would enforce confidentiality agreements only when the information sought to be protected was actually confidential and reasonable efforts were made to keep it confidential. *See Tax Track Sys. Corp.v. New Investor World, Inc.*, 478 F.3d 783, 787 (7th Cir. 2007) *citing Curtis 1000, Inc. v. Suess*, 24 F.3d 941, 947 (7th Cir. 1994). No evidence was presented that any of the information contained within the deposition transcript concerning the husband's employer was actually confidential or that any reasonable efforts were made by anyone to keep it confidential. The deposition transcript did not contain confidential material as defined in the order. Judge Matthew Link denied the husband's Amended Post-Decree Petition for Sanctions.

Comments of Attorney Jacqueline Breisch:
"The Judge seemed surprised that the Motion was pursued. There was no evidence of any damages to the husband based on the dissemination of information that he claimed to be confidential through the divorce and post-decree proceedings."

Sole Parenting to Mother

Both parties sought the court to rule on the parenting issues which had been reserved in the Judgment for Dissolution of Marriage. The mother was, by agreement, granted the majority of the parenting time. Judge Neal W. Cerne allowed her the sole decision-making authority with respect to the child's health, extracurricular activities and education. The decision was largely influenced by the fact that the mother lived in Los Angeles, California while the father lived in Vietnam.

The mother was represented by Alexander A. Sendlak of Dolci & Weiland, LLC. The father was represented by Anthony J. Giudice of Goostree Law Group, P.C.

The court considered various factors in determining the allocation of parenting time. Both parents stipulated that the mother would have the majority of parenting time. Since the parents stipulated as to the majority parent, the child's preference was not relevant. Prior to the commencement of these proceedings in August, 2016, the mother had been the primary caretaker of the child. Since March, 2016, the child had essentially been in the exclusive control of the mother. The distance between the parties made communication moderately difficult. The mother lived in Los Angeles and the father was in Vietnam. There was a fourteen hour time difference between the parties making communication moderately difficult. There was no need to restrict parenting time. Both parents appeared to put the best interest of their child above their own. The mother had the ability and willingness to facilitate a relationship between the father and the child. However, her unilateral decision to move the child from Vietnam to the United States did not support her stated desire.

No evidence was tendered to suggest the preference of the child as to whom should be the primary decision-maker, nor would it be relevant considering the age of the child. The child was adjusted to her home, school, and community. The parties had the ability to cooperate in making decisions relative to their child. The parties lived in different time zones, a 14 hour time difference. However, they had been able to effectively communicate with each other by email except for the mother not disclosing her address in Los Angeles. The parties had both been the decision-makers during the past. They both decided to

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move to Vietnam with the minor child in 2015, and did so. However, the mother solely decided to move herself with the minor child to the United States in 2016. Neither party indicated that they wanted a decreased role in their child's life, and expressed that they both wanted to be part of the decision making process.

There were extended factors (geographic, cost, travelling inconveniences, schedules, or personality traits) that adversely impacted the ability of the parties to participate in decision-making. The father lived in Vietnam and the mother lived in Los Angeles. That distance allowed him not to experience the impact or results of his decision-making, it was very difficult for him to be involved with the implementation of the decisions, or to be involved in investigating options, i.e. interviewing teachers, doctors, therapists, etc. The mother had not demonstrated a willingness to encourage a close and continuing relationship between the father and the child. The mother's non-disclosure of her address in Los Angeles was problematic. She left Vietnam and went to Florida in March of 2016 with the child for the alleged purpose of buying a condominium for her parents. This did not turn out to be temporary. She then went to Los Angeles with the child without disclosing that to the father. She had not returned to Vietnam and did not plan to do so. The mother had made some relevant allegations to the evaluator. She did not testify to those allegations nor were they substantiated by the evaluator.

The mother was to solely make major decisions concerning the child, including, but not limited to the following: public education through high school, including the choice of schools and tutors. Health, including all decisions relating to the routine and ordinary medical, and dental needs of the child, and to the treatments arising from those needs, including care and choice of physicians, dentists, and the like. Choice of child care and after-school care was to be made by the mother. Summer camp in Vietnam, including whether the child should attend summer camp, the duration of the camp, and the selection of the camp was to be made by the father.

The mother was to have all parenting time except that the father would have parenting time with the child commencing from on or about June 20 for a period of seven weeks in Vietnam. The father had the right to schedule a weekend of parenting time, Friday to Sunday, during the school year, or 10 days during non-school days in the United States. For the summer of 2018 the notice time was reduced to seven days.

At this time, the child was not to fly alone. She was to be accompanied by the mother at the start of the father's parenting time and by the father at the conclusion of his parenting time.

Solely for purposes of 750 ILCS 5/606.10, the mother was designated the parent with the majority of parenting time. This designation was to be without prejudice or precedential value of any kind to any allocation of parenting responsibilities, decision-making responsibilities, parenting time, or any other matter at any time.

Solely for purposes of school enrollment and in accordance with 750 ILCS 5/606.10, the residential address of the child was to be that of the mother.

In the event that either party sought to change his or her residence, that parent was to provide at least 60 days prior written notice of the change to the other parent, unless such notice was impracticable or unless otherwise ordered by the court.

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Absent written agreement to the contrary, the parties were to have parenting time with the child as follows:

(a) the mother was to have all parenting time except for the following;

(b) the father was to have parenting time with the child commencing from on or about June 20 (the exact date depending on the direct flight he was able to arrange) for a period of seven weeks in Vietnam. This was to commence in 2019.

(c) upon at least 28 day written notice to the mother, the father had the right to schedule a weekend of parenting time, Friday to Sunday, during the school year or ten days during non-school days in the United States with the minor child. For the summer of 2018 the notice of time was reduced to seven days.

Comment of Attorney Alexander Sendlak:
"The proposed article is accurate and no changes are required."

Comments of Attorney Anthony Giudice:
"Except for one typo, the article is accurate."

Wife Retains Substantial Assets Acquired After Separation

A Judgment for Dissolution of Marriage was entered on June 26, 2018. It reserved the issues of property, finances, attorney's fees and related issues for a future determination. Subsequently, a Supplemental Judgment was issued by Judge Gregory E. Ahern, Jr. He ordered the parties to divide their assets as of 2002 when they had separated notwithstanding the fact that the wife had accumulated a substantial estate since 2002, while the husband had depleted virtually all of the assets he had owned in 2002. The court also ordered the husband to pay substantial attorney's fees as a sanction for his violations of discovery and other misconduct.

The wife was represented by Heather M. Nosko of Katz, Goldstein & Warren. The husband was represented by Becky L. Dahlgren, from the law firm of Dahlgren Legal Services.

The parties were married on January 25, 1992 and ceased living together on or about October 31, 2002. They had no children. The wife was 49 years of age and resided in West Newton, MA and was in good health. Her highest level of education was a high school diploma. The husband was currently 54 years of age and resided at Streamwood, Illinois. His highest level of education was a high school diploma.

Notably, the court found that the husband's testimony during the proceedings was not credible and that his testimony and that of his girlfriend would be laughable were it not under oath and in a court of law. The trial contained more blatant perjury than any other trial the court had heard. The court found that the wife's testimony was credible and while the husband's, his girlfriend's and his doctor's testimony was not.

The wife had stipulated that she was cohabitating on a resident continuing and conjugal basis and did not seek maintenance. The husband filed a petition for temporary maintenance, attorney's fees and health insurance but did not proceed on to his petition to seek maintenance and no maintenance was ever awarded to him. He testified that the woman with whom he was living was merely his roommate and best friend which testimony the court found was not credible. The court rejected the husband's argument that he had not co-habitated on a resident, continuing, and conjugal basis for various reasons including, among others, that he had met his girlfriend in 2011 and she moved into his residence along with furnishings in September of 2012. They continued

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to be in a long-term, exclusive relationship and the husband admitted that the relationship was intimate and sexual. The court made numerous other findings in support of its determination that the parties were living in a resident, continuing, conjugal arrangement.

The parties stopped living together in October of 2002 and lived completely separate lives since then. The parties agreed to divide their assets individually held as of that time but did not agree to an allocation of property acquired since 2002. In October of 2002, the marital estate was comprised of a joint Fidelity investment account with a balance of $100,601.53, a savings plan of $25,923.91 as of 4/8/2003, the wife's stock account balance of $13,000, the wife's IRA $7,057.67, the husband's IRA of $7,057.67, the husband's 401(k) account, a 2001 BMW 325 automobile which was encumbered by a loan, a 1994 Lexus ES-300 which had no loan, and the contents of the former marital residence.

From 2003 through 2012, the wife's 401(k) account went from $25,923.91 to $486,413 while her stock account from 2003 went from $13,000 to $143,000. Her IRA went from $7,057.67 to a current balance of $37,539.

As a result of the wife's prudent investment decisions and responsible lifestyle choices, the wife continued to maintain the assets she received since the parties' separation in 2002. On the other hand, the husband squandered the assets he received since the parties' separation in 2002 and they were no longer available. He had received exclusive benefit of such.

From 2002 to the present, the husband made no contributions of any kind, "monetary or non-monetary" to the wife including but not limited to her career, her family, her life, her funds or her assets.

The wife was employed with the Hartford Company earning $39,451 in 2002. Her income increased each year. In 2017, she earned $145,799.95. After 2002, she acquired assets in her name through hard work and living frugally which allowed her to save money and by making prudent investment decisions. The husband made no contribution to any of the assets in her name.

Rather than invest his funds, the husband chose to diminish the estate by investing in lavish vehicles and purchasing memorabilia. The wife had no input in his purchase decisions and received no benefits from them. He made a negative contribution to the marital estate.

The husband and his girlfriend testified that certain collectibles that he had purchased since 2011 were owned by his girlfriend. These included various plaques with autographed baseball and basketball cards, photographs of various sports teams, autographed sports figurines, football helmets and jerseys, and motorcycle racing memorabilia. The court found his and his girlfriend's testimony incredible.

The husband filed his notice of dissipation and the wife met her burden and proved by clear and convincing evidence that she had not dissipated the marital estate.

The husband was last employed on February 5, 2014. He currently received $2,079 per month from Social Security. In October 2017, he received $82,116 for retroactive Social Security Disability. He failed to disclose his disability lawsuit to the wife during discovery.

Dr. Gene O. Neri, a neurologist, testified and stated that the husband suffered from anxiety, depression, obsessive compulsive disorder, extreme neck and shoulder muscle spasms down

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the spine of the low back consistent with fibromyalgia. Dr. Neri was combative and hostile during his testimony. His testimony and his opinion that the husband was not able to work was not credible. The husband's actions were inconsistent with someone who was homebound and unable to work due to an alleged disability. The court found that the husband was employed and had been buying and selling collectibles and memorabilia for a living and was capable of continuing such work should he desire.

Based on the parties' agreement to separate their assets in 2002, the wife's contribution to the marital estate, the husband's negative contributions and dissipation of the marital state, both parties' income and employability, and all factors contained in Section 5/503, the court found that each party was awarded their respective assets and debts in their own names.

Based on the husband's conduct, the court found that he should be responsible for the wife's attorney fees. The court found that he intentionally and recklessly filed an inaccurate and misleading financial affidavit and was guilty of a number of discovery violations including failure to disclose all of his assets, as well as the true nature of his disability. During the proceedings, he continued his harassing conduct toward the wife calling her a "whore" in open court. He was ordered to contribute $60,609.50 as and for various sanctions.

Maintenance Terminated and Child Support Reduced

The husband claimed that the wife was in contempt of court for failing to pay to the husband his share of the proceeds of the sale of the marital residence pursuant to the parties' Marital Settlement Agreement. The husband also sought to modify his child support and maintenance obligations despite the fact that the Marital Settlement Agreement stated the maintenance payments would be non-modifiable. Judge Edward A. Arce did not find the wife in contempt, but found that she owed the husband his share of the house sale proceeds. Judge Arce modified maintenance to zero and found that the plain language of the Agreement, as a whole, resulted in the cessation of maintenance. The husband established a material change of circumstances affecting his ability to pay child support and reduced his obligation to $5,851 per month for the two minor children which had been originally set at $10,000 per month.

The wife was represented by Leslie J. Fineberg and Ashley R. Margason of Nottage and Ward, LLP. The husband was represented by Sean M. Hamann of Lake, Toback & Associates, Ltd. and Barry H. Greenburg of the Law Firm of Barry H. Greenburg.

There was no dispute that Article 9.1 of the Marital Settlement Agreement provided that upon the sale of 55 E. Erie St., Unit 1805, Chicago, Illinois, "the parties shall each receive fifty percent (50%) of the net proceeds after payment in full of the mortgage and any other usual and customary expenses incurred by reason of the sale of the marital residence." There was no dispute that the real estate was sold on June 17, 2014 and the net proceeds realized from the sale totaled $154,297.72. The wife did not dispute that she alone received the entire net proceeds, which she used to purchase another residence. Accordingly, a Rule did issue against the wife on September 1, 2017. While the wife admittedly received the proceeds of sale, the evidence in the record suggested that the husband was keenly aware of and tacitly approved of her selling the residence and to use the proceeds of the sale to

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purchase her new residence. The closing of the sale occurred on June 17, 2014, seventeen months before the husband filed his petition seeking enforcement of Article 9.1. The court found that the wife's failure to comply with the Order was not willful or contumacious. However, her allegation that the parties subsequently agreed that she would be allowed to keep the entire proceeds as her own failed. Pursuant to Article 14.5 of the Marital Settlement Agreement, "the parties may only amend or modify this Agreement by a written Agreement dated and signed by them. No oral agreement was to be effective to, in any manner, modify or waive any terms or conditions of this Agreement." No such writing existed. Therefore, the husband was entitled to receive the benefit of his bargain which was $77,148.86.

Pursuant to Article 4.2 of the Marital Settlement Agreement, the husband agreed to pay to the wife maintenance of $5,000 per month through September 1, 2017 and $4,000 per month from October 1, 2017 to September 1, 2024. In the event that "the current mortgage for the property located at 55 W. Erie, Unit 1805, Chicago, Illinois was refinanced resulting in a decreased monthly payment, or the cost of the real estate taxes and/or assessments increases subsequent to the entry of the Judgment, then the amount of the husband's payments to wife for maintenance shall be increased or decreased accordingly by the same amount as the change in those costs."

Pursuant to the Marital Settlement Agreement, maintenance payments "shall be non-modifiable as to amount and duration, except as otherwise set forth in Paragraph 4.2, and that the husband's obligation to make said payments would terminate only in the event of the wife's death, remarriage, or her cohabitation with another person on a continuing, residential conjugal basis. The parties specifically waived any other termination events as defined by Illinois statute or common law."

Interestingly, both parties agreed that the Marital Settlement Agreement was unambiguous. The husband asserted that, after the sale of the marital residence, the wife's monthly mortgage payment, real estate taxes and assessments for that residence would be zero. Therefore, the wife's monthly mortgage was decreased to zero. She asserted that the refinance of the mortgage and increase of real estate taxes or assessments on the property were conditions precedent to a modification. She did not refinance the mortgage on the husband's amended petition filed on October 1, 2015. Therefore the condition precedent to a modification had not been met and maintenance payments were to continue.

The provisions of marital settlement agreements and of dissolution judgments which incorporated such agreements were interpreted under the same rules of governing the construction of contracts. *In re Marriage of Mateja*, 183 Ill. App. 3d 759,761 (1989). A court was required to construe provisions within settlement agreements so as to give effect to the intention of the parties, and where the terms were unambiguous, the parties' intent must be determined solely from the language of the instrument itself. The parties' intent must be determined from the instrument as a whole, and it is presumed the parties inserted each provision deliberately and for a purpose. *In re Marriage of Holderreith*, 181 Ill.App.3d 199, 202 (1989). The terms and provisions of the instrument may not be construed in a manner which was contrary to or different from the plain and obvious meaning of the language used. *In re Marriage of Druss*, 226 Ill. App. 3d 470,474 (1992). In addition, it was beyond the province of the court to evaluate the wisdom of the contract terms agreed to by the parties. *Gaffney v. William J. Burns Detective*

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Agency International Inc. 12 Ill.App. 3d 476,482 (1973).

Using these principles as a guide and after reviewing the entire Marital Settlement Agreement, the court found that the husband's maintenance obligation was to be reduced to zero. In making this finding, the court considered the support obligations for the children undertaken by the husband provided that the wife was to be awarded exclusive possession of the marital residence and that she alone would decide when it would be sold. The husband was to be solely responsible for the cost of all repairs and maintenance to the property which exceeded $250.

When reading the Marital Settlement Agreement as a whole, it was apparent that the parties contemplated that the wife, who was not working at the time, and the children would continue to reside at the marital residence for as long as the wife chose. In turn, the husband was to pay all of the children's out of pocket expenses and enough in child support and maintenance to allow the wife to pay the hard costs related to living in the marital residence requiring her to seek employment. Effectively, the husband's payments to the wife were to result in increased equity to the husband when the marital residence was ultimately sold.

The wife's suggested interpretation of Article IV required the court to ignore the presumption that the parties inserted each provision deliberately and for a purpose. The wife asserted that the reference to the marital residence strictly related to the refinance or increase and decrease to real estate taxes and assessments and, since this did not happen, the modification of Article 4.2 was not triggered. The wife failed to explain why she would agree to specifically identify the marital residence in the modifying provision instead of a modifying provision for any future residence or no modifying provision at all.

The next issue before the court was whether there was a substantial change of circumstances which would require a modification of the child support order. Based upon the evidence at the trial, the court found the husband had established by a preponderance of the evidence that a substantial change of circumstances had occurred since the entry of the Judgment. The issue of the husband's income was heavily contested. Based upon the evidence and the court's review of the case law, the court found that distributions from the Mission Measurement companies to the husband from his deferred compensation were includible as income for child support purposes. *Posey v. Tate,* 275 Ill. App. 3d 822, 656 N. E.2d 222, 1995 Ill. App. LEXIS 773, 212 III.

Per the husband's testimony, the deferred compensation was in lieu of a bonus because the resources were not available for the entities to pay a bonus. The court further found that the loan from Mission Measurement in the amount of $251,000 and distributions from the husband's IRA were not includible as income for child support purposes. *In re the marriage of McLauchlan,* 966 N.E.2d 1151, 2012 III. App. LEXIS 169, 2012 IL App (1st)102114, 359 III. Dec. 463, 2012 WL 880603. The court also found that the husband had established that his combined salary from the Mission entities was $400,000. Accordingly, the court found that the husband's net income in 2015 was $286,928.86, $423,302.83 for 2016 and $214,137.12 for 2017 through May 31, 2018. Pursuant to the statutory guideline then in effect, his child support total through May 31, 2017 would be $198,568.83.

The court considered and rejected the husband's arguments concerning a deviation from

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the statutory guideline then in effect including the increase in the wife's income since entry of the Judgment and the subsequent amendment of 750 ILCS 5/505 to an income shares model. There was no dispute that the husband failed to comply with his maintenance and child support obligations during the pendency of this post decree litigation. His position at the hearing was that he was unable to comply based upon his reduced income and that he overpaid both maintenance and child support prior to stopping support payments altogether. As it related to child support, the court found this was not the case. While the husband received his income in 2016 and 2017 in different forms, the findings clearly supported a finding that there was no reasonable cause or justification for his failure to pay child support.

The court found that the wife had failed to establish that the husband, without legal cause or justification, failed to pay the camp, activity, medical and dental expenses. The husband's Petition for Rule to Show Cause and for Adjudication of Indirect Civil Contempt was granted, in part, and denied, in part. The rule to show cause issued against the wife was discharged. A Judgment was entered in favor of the husband and against the wife in the amount of $77,148.86 as and for his one-half interest in the proceeds of sale from the marital residence.

The husband's Amended Motion to Modify Child Support, Contribution to Additional Expenses, Maintenance, and for Other Relief was granted. The husband's obligation to pay maintenance was modified pursuant to the provisions of Article 4.2. This order was entered retroactive to the date of the original filing which was October 1, 2015.

The husband's child support obligation from October 1, 2015 was $20,085.00 for 2015, $118,524.84 for 2016 and $59,958.99 through May 31, 2017. The husband was to pay to the wife the sum of $5,851 per month as and for child support of the parties' two minor children. In addition, the husband was to pay the wife 28% of the net income received from his deferred compensation payments. This order was retroactive to June 1, 2017.

Effective upon the entry of this order, the Judgment for Dissolution of Marriage was modified to provide that the wife was to pay 40% and husband was to pay 60% of the minor children's camp and extracurricular activity expenses and that the wife was to pay 40% and the husband was to pay 60% of the children's uncovered or unreimbursed medical, dental, optical, surgical, orthodontia, hospitalization, prescription medicine, psychiatric and psychological expenses.

The husband was held in indirect civil contempt for his failure to comply with the Order entered on January 18, 2011 that he pay child support in the amount of $10,000 per month. The wife's counsel was granted leave to file a Petition for Attorney's Fees pursuant to 750 ILCS 5/508(b).

Comment of Attorney Sean Hamann:
"Please note that the husband's maintenance obligation pursuant to the Judgment was reduced to zero. I am not sure the best way to phrase it."

Elderly Couple to Split Assets, Maintenance Denied

The parties were married on December 31, 1986. The wife was 64 years of age and the husband was 69 years of age. They had three children who were emancipated. Judge Neal W. Cerne equally divided the marital estate and barred both parties as to any claim for maintenance or attorney's fees.

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The wife was represented by Aldo E. Botti of Botti Law Firm, P.C. The husband was represented by David N. Schaffer of Schaffer Family Law, Ltd.

The husband was 69 years of age. He was employed as a CPA at Joseph D. Jessee, P.C. At his firm he reviewed the work of the two accountants in his office, and he did consulting. He complained of many ailments including a severe loss of sight. While in court, he appeared to have difficulty moving as evidenced by his use of a wheel chair. The husband's taxable income had been $84,836 in 2012, $81,300 in 2013, $111,318 in 2014, $139,308 in 2015 and $121,507 in 2016.

The wife was 64 years old and employed as the Dean of the College of Education at Lewis University for which she was paid $135,065 per year. She had been in that position for 13 years. She was planning to retire on June 30, 2018. Upon her retirement she would receive a monthly gross amount of $2,671 ($32,052 per year) if she received the full amount of her pension. She was receiving and in the future will receive $4,583 gross per month ($55,000 per year) from a TRS pension that she earned as a result of being a teacher for 22 years.

The marital estate consisted of a residence located in Orland Park, Illinois with equity of $18,179, a residence in Willowbrook, Illinois with equity of $80,314, a vacant parcel located in Beecher, Illinois with a fair market value of $12,000, a vacant 17 acre parcel located in Lemont, Illinois with a possible value in excess of $500,000.

The wife was a participant in the Teachers Retirement System (TRS). She received $55,638 per year. She was a participant in a pension plan as a result of her employment with Lewis University of approximately $28,000 per year. She had an interest in two retirement accounts: a 403(b) Lewis University Plan at $48,667 and a Traditional IRA valued at $37,873.

The value of the estate was minimal. The estate consisted of automobiles, financial accounts, real estate valued at $185,493 (subject to a lawsuit regarding code violations), retirement accounts totaling $86,540 and a pension.

The husband inherited some assets from his mother's estate. The estimated value of that inheritance was $190,000.

The court considered the various statutory factors in apportioning the marital estate. The net estate was approximately $260,000 to be divided between the parties. That value was subject to the pending lawsuit by Cook County regarding code violations. The length of the marriage was 31 years. The parties were married on December 31, 1986, and the Judgment dissolving the marriage was entered in June, 2018. Each party resided in a separate residence. The parties had not lived together for several years. Both parties faced difficulties in acquiring future assets. The husband was slightly older, did not earn a significant income, and did not seem to possess the health necessary to work for many more years. The wife was retiring after many years of working and would have to live from her retirement income.

The husband's present and future earning capacity was greater. Since the husband earned more than the wife when she retired, he did have a greater ability to earn income in the future than did the wife as a result of her impending retirement. However, prior to her retirement she earned significantly more than the husband. In addition, the husband was 69 years of age with a limited number of working years remaining. He appeared to be in bad health. He complained of being nearly blind, and appeared to be in great

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pain and had difficulty moving during the trial of this matter. The wife appeared in good health.

The Illinois statute on maintenance would suggest either a permanent award or an award of maintenance for the duration of 26 years 8 months in an amount of $838 per month. The parties were married 26 years 8 months. The husband had an average gross income of $107,652 over the past five years, and the wife had an average income of $186,019 over the past six years. However, she would be retiring and her income would be the $55,000 from her TRS pension and her portion of the pension from her retirement from Lewis University, excluding the pension to be shared by the parties. The Illinois statute would suggest a maintenance amount of 30% of $107,652 ($32,296) less 20% of $55,000 ($11,000), or $1,775 per month. 750 ILCS 5/504(b-1)(1)(A). However, the amount of maintenance and the wife's income ($21,300 + $55,000 = $76,300) could not exceed 40% of the combined income of the parties. The combined income of the parties was $162,652, and 40% was $65,061. Therefore, a maintenance amount that equaled the 40% rule would be $838 per month ($65,061 - $55,000 = $10,061). This maintenance to the wife was only the result of her retirement which caused her gross income to be lower than the husband's gross income.

The residence in Willowbrook and the vacant lot in Beecher were to be listed for sale and the proceeds equally divided. From the husband's share, the sum of $9,000 would be paid to the wife for her interest in the Orland Park residence. The vacant 17 acre lot in Lemont, Illinois was to be sold and the proceeds equally divided between the parties once the litigation had been concluded allowing for the sale. The wife's pension from her employment at Lewis University was equally divided between the parties. The wife's 403(b) and traditional IRA were equally divided between the parties.

Each party was barred from receiving maintenance from the other. Attorney fees were the primary responsibility of the party who incurred them. Based upon the division of the marital estate neither party had the greater ability to contribute to fees. Therefore, neither party was ordered to contribute to the attorney fees and costs of the other.

Comments of Attorney David Schaffer:
"This matter is now on appeal. As such I do not believe it to be appropriate to contribute to your article at this time."

Publisher's Note:
"Please note that our publication is limited to trial court cases. As a follow up, we only publish Appellate decisions if we have published the trial court decision."

Deficiency Judgment Assigned to Husband

The parties were married on August 26, 1990. They had two children, both of whom were emancipated. The parties had been living separate and apart since August of 2010. The husband was to be responsible for a deficiency judgment of $497,772 as a result of allowing the home to be foreclosed upon in addition to being charged with dissipation of $86,372.96.

The wife was represented by Heather M. Nosko and Jeffrey P. Cash of Katz, Goldstein & Warren. The husband was represented by Jan R. Kowalski of Jan R. Kowalski, P.C.

During the pendency of the proceedings, the wife's mother passed away. By way of inheritance or exchange, the wife possessed assets consisting of a condominium located in Chicago,

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Illinois, which was subject to a mortgage, a 2015 Volkswagen GTI purchased with inherited funds, various bank and savings accounts with Fifth-Third Bank, and a Great West Life & Annuity Insurance Company Single Premium Universal Life Insurance Policy also purchased with inherited funds.

The parties purchased their former marital home located in Chicago for $1,060,000 in 2005. The husband moved out of the marital home in August of 2010. After moving out of the marital home, the husband stopped paying the monthly mortgage payment and the marital home went into foreclosure. A personal deficiency judgment was entered against the husband in the amount of $497,772.46.

The wife was 59 years old, and had not been employed outside the home for approximately 25 years. She testified that she lacked the experience and training to be competitive in today's job market. She further testified that she was in poor health. The husband was the sole financial support of the family during the marriage. The wife calculated her monthly living expenses to be $8,422.57 per month. The husband calculated his monthly living expenses to be $4,680.78 per month. He worked continuously in his field during the marriage. His career continued to grow and develop throughout the marriage.

The wife testified that after the husband moved out of the marital residence he stopped paying the mortgage and household expenses. The marital home fell into disrepair and she was forced to move because black mold had formed due to a leak in the roof of the home. She also testified that she moved, lived with friends and for a brief time was living with a male friend. The wife testified that she slept in a spare bedroom during her stay at her friend's residence.

The wife's claim of dissipation cited the husband's failure to pay the mortgage on the marital home resulting in a deficiency judgment of $497,772.46 and his transfers totaling $86,372.96 from his personal and Walkwest financial accounts to the parties' two adult daughters. A deficiency Judgment was entered against the husband in February of 2016 and all equity in the marital home was lost.

The husband opened a Walkwest account during the marriage. From Walkwest, he transferred marital funds to the parties' two adult daughters totaling $86,372.96 between 2014 and 2017. Walkwest issued 1099s to the parties' daughters. There was no testimony that the daughters ever were employed by Walkwest. In 2014, the husband transferred $5,443.67 from his personal PNC account to the bank accounts of the parties' two adult daughters. The wife testified that all of the transactions were made without her knowledge, consent, or over her objection.

On August 30, 2017, the wife filed a Petition for Rule to Show Cause For a Finding of Indirect Civil Contempt and Other Relief due to the husband's failure to comply with the court's July 28, 2016 temporary support order. The court's July temporary support order required the husband to pay the wife $2,000 per month in temporary maintenance, her current health insurance at the rate of $571.75 per month. In her Petition for Rule the wife alleged that from July 1, 2016 through August 31, 2017 the husband failed to pay her $28,000 in court ordered temporary support. The husband denied her assertion that he was financially able to pay the temporary support as ordered.

The parties were awarded a Judgment of Dissolution of Marriage and the parties were each awarded the personal checking and savings

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accounts in their names. The Steinway "B" piano was to be immediately listed for sale in accordance with the terms of the March 17, 2016 and March 18, 2016 orders. The wife was to have the final authority to accept all offers for purchase of the piano. The parties were to divide the proceeds of the sale of the piano evenly.

The husband's income from The Art Institute of Chicago and Walkwest Co. productions totaled $94,022.56. Commencing on May 1, 2018, the husband was to pay the wife $2,350.56 per month in permanent maintenance. He was to maintain a life insurance policy on his life in the amount of 1,000,000 to secure his maintenance obligation.

The husband was awarded sole ownership of Walkwest Productions, LLC. He was to receive as his sole property all works created after the date of the Judgment for Dissolution of Marriage. The wife received as her sole and exclusive property, free and clear, the Chicago condominium, the 2015 Volkswagen GTI automobile and the contents of the various bank and savings accounts, and the Great West Life & Annuity Insurance Company Single Premium Universal Life Insurance Policy purchased with inherited funds.

The husband was to be solely responsible for the $497,772.46 deficiency judgment entered against him, resulting from the loss of the former marital residence. He was also to be solely responsible for all marital debts held jointly in both parties' names, for which he was to bear sole responsibility.

The husband's dissipation totaled $86,372.96. He was to pay the wife $43,186.48, representing 50% of their shared funds within 120 days after entry of the Judgment for Dissolution of Marriage. The court rejected the husband's argument that he did not have the financial ability to comply with the temporary support orders. He transferred a total of $86,372.96 to the parties' children between 2014 and 2017. The court found that the husband's non-payment of temporary support to the wife was willful and without justification. He was to pay the wife $28,000 within 120 days after entry of the Judgment for Dissolution of Marriage.

Each party was to be solely responsible for payment of their respective outstanding attorney's fees and costs and each was to indemnify and hold the other party harmless.

Venue Improper

The parties began litigation of an uninterrupted and continuous period from February 2011 through the current date. The agreed custody parentage order was entered October 3, 2013 in this court. The wife who now lived in McClean County, Illinois sought to relocate with the parties' one minor child to Arizona. The husband, who lived in Bloomington, Indiana, objected to the court being the proper venue and sought to dismiss the case. Judge Timothy P. Murphy agreed and dismissed the case for lack of venue.

The wife was represented by Abbey Mark Botkin of the Law Offices of Abbey Mark Botkin. The husband appeared Pro Se.

An Agreed Custody Order was entered into by the parties on October 3, 2013. On June 5, 2017, the wife filed her Petition for Relocation of the Minor Child seeking to remove the six year old child from the State of Illinois to the State of Arizona, to the city of Phoenix. Also on June 5, 2017, the wife filed her Notice of Intent to Relocate. On June 9, 2017, Judge Mary C. Marubio appointed Michael Bender as the

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Guardian ad Litem for the minor child, and set the matter for status on August 4, 2017.

On November 3, 2017, an order was entered by Judge James Kaplan setting the matter to December 13, 2017 for status. On December 13, 2017, an Order Regarding Substitution of Judge or Recusal was entered by Judge Kaplan. The Order further stated "Petitioner has 48 hours to file SOJ motion." The cause was then transferred to Judge Timothy P. Murphy.

On the hearing date of April 16, 2018, counsel for the wife made an oral motion under Illinois Supreme Court Rule 187(a) to dismiss the husband's Motion for Change of Venue & Forum Non Conviens as being untimely filed.

Rule 187(a) provides:

Rule 187. Motion on Grounds of Forum Non Conviens

> (a) Time for Filing. A motion to dismiss or transfer the action under the doctrine of forum non conviens must be filed by a party not later than 90 days after the last day allowed for the filing of that party's answer.

The court noted that the husband's Motion addressed both venue and forum non conviens which were two separate issues. 735 ILCS 5/2-104 provides:

2-104. Wrong Venue-Waiver-Motion to Transfer.

> (b) All objections of improper venue are waived by a defendant unless a motion to transfer to a proper venue is made by the defendant on or before the date upon he or she is required to appear or within any further time granted him or her to answer or move with respect to the complaint.

750 ILCS 5/512 relates to post-judgment venue and provides in relevant part as follows:

> 512. Post-Judgment Venue.
>
> After 30 days from the entry of a judgment of dissolution of marriage or legal separation or the last modification thereof, any further proceedings to enforce or modify the judgment shall be as follows:
>
> > (c) If neither party resides in the judicial circuit wherein the judgment was entered or last modified, further proceedings shall be had in that circuit or in the judicial circuit wherein either party resides; provided, however, that the court may, in its discretion, transfer matters involving a change in the allocation of parental responsibilities to the judicial circuit where the minor or dependent child resides.
> >
> > (d) Objection to venue is waived if not made within such time as the respondent's answer is due. Counter relief shall be heard and determined by the court hearing any matter already pending.

In the instant case the pleadings and admissions reflected that at all relevant times the wife and the minor child resided in McClean County, Illinois and that the husband resided in Bloomington, Indiana. The court found that neither of the parties currently resided in Cook County, Illinois and that pursuant to 750 ILCS 5.512(c), the court found that venue in Cook County, Illinois was not proper.

The remaining question for the court was whether the husband's Motion relating to venue was barred as untimely under Supreme Court Rule 187(a) or the statutory provisions related to venue referenced above by the court. As noted, Rule

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187(a) relates to a motion for a finding of a forum non conviens. This court found that the question relating to venue was dispositive to the matter at hand, and the court found it unnecessary to address the forum non conviens factors and relevant issue.

The court's review of the record reflected that the husband filed or presented a Motion for Extension of Time citing Supreme Court Rule 183 on or about August 11, 2017. Judge Marubio's Order of August 25, 2017 stated, "The court will allow Respondent's Answer to the Relocation Petition but it will treat the pleadings as an objection and strike the pleadings testimonial allegations and paragraphs," effectively converted the husband's previously filed Answer to merely an Objection to the wife's Notice of Intent to Remove, and said Order failed to address the husband's request for an extension of time to answer the wife's Petition for Relocation. Consequently, no date/deadline for the filing of the husband's Answer was set by the court, and the husband's filing of his Motion for Change of Venue & Forum Non Conviens was not time barred, and was properly before the court.

Judge Murphy found that the husband's Motion for a Change of Venue and Forum Non Conviens was granted on the basis of a lack of venue. Pursuant to 735 ILCS 5/2-106, the matter was transferred to the Circuit Court of McClean County, Illinois for further proceedings. Michael Bender, the previously appointed Guardian ad Litem in this matter was discharged, subject to any requirement by the McClean County court to make a report therein. The parties and the Clerk of the Circuit Court of Cook County were directed and required to comply with the provisions of 735 ILCS 5/2-107 to effectuate the transfer of the cause to McClean County, Illinois.

Wrongdoing Precludes Modification (Update)

In Volume 9, Issue 3, the May 2018 Digest reported a decision from Judge Dominique C. Ross which denied the husband's Motion to Modify Maintenance and allowed the wife to file a Section 508(b) Petition for Attorney's Fees despite no finding of contempt. On August 23, 2018 the wife was awarded $30,000 in attorney's fees which amount she had requested. The Judge found that the husband's willful and voluntary conduct led to the termination of his request as the underlying cause which led to his filing of the Motion to Modify Maintenance and that the husband's self-help action precipitated the wife's action to enforce the terms of the Judgment.

Appellate Review: Award of $21,129,655 Plus Permanent Maintenance of $30,000 Monthly

In Volume 7, Issue 9, November 2016, the Digest reported a decision of Judge Neal W. Cerne titled, "Award of $21,129,655 Plus Permanent Maintenance of $30,000 Monthly".

On May 31, 2018, the Second District Appellate Court issued its opinion affirming the decision of Judge Neal W. Cerne holding:

> **"Following a trial in the circuit court of DuPage County, the court entered a judgment dissolving the marriage of [the parties]. As part of that order, the court sanctioned one of [the wife's] attorneys, Howard Rosenfeld, in the form of a $50,000 judgment against him and in favor of [the husband]. [The wife] appeal[ed], challenging the court's factual findings as well as numerous rulings both prior to and during trial. Rosenfeld separately appeal[ed] the sanctions entered against him".**

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To read the entire Appellate Opinion, visit www.illinoisdivorcedigest.com.

Appellate Review: Indefinite Maintenance of $2,114 Plus 60% of Marital Estate

In Volume 7, Issue 8, October 2016, the Digest reported a decision of Judge Theodore S. Potkonjak titled, "Indefinite Maintenance of $2,114 Plus 60% of Marital Estate".

On August 14, 2018, the Second District Appellate Court issued its opinion remanding the decision of Judge Theodore S. Potkonjak holding:

> **"The trial court did not err in finding that [the] husband's trust disbursements were income for child support and maintenance purposes, but the court erred in finding that his unprofitable stock market transactions were dissipation and that an agreed support order required him to pay the mortgage on the marital residence. A remand is necessary to remedy stock market dissipation and mortgage issues and to address deviations from statutory guidelines for child support and maintenance".**

To read the entire Appellate Opinion, visit www.illinoisdivorcedigest.com.

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