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**DISTRICT II**

September 27, 2017

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Waukesha County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP1799

In re the marriage of: Gail Denise Neu v. Robert Allen Neu  
(L.C. #2005FA1669)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Robert Allen Neu appeals from an order denying his motion to modify his family support obligation. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> Robert's

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

assertion that he owes no portion of his 2015 bonus under the Marital Settlement Agreement (MSA) is contrary to the terms of the MSA. We therefore affirm.

### BACKGROUND

The parties were divorced on May 1, 2007. The original MSA provided for joint custody of the children, primary placement with Gail Denise Neu, and periods of placement with Robert.

As for family support, the MSA stated in relevant part:

Commencing May 1, 2007, the Husband [Robert] shall pay family support to the Wife [Gail] in the sum of \$3,250 on the first \$108,000.00 of annual income earned by the Husband and an additional amount equaling 30% of Husband's annual income in excess of \$108,000.00. Family support shall continue for a period of eight (8) years and (6) months following the granting of the Judgment of Divorce.

....

The Husband's obligation to pay to the Wife the sum equaling 30% of the Husband's annual income in excess of \$108,000.00, shall be paid based on his year end income and commences with his 2007 income. The 30% shall be paid annually no later than January 31st commencing in 2008.

The parties agree that the eight years and six months of family support payments ran from May 1, 2007, through October 31, 2015.

In 2009, the parties stipulated to Gail having full custody and placement and Robert not sharing placement. They also agreed to increase the family support as follows:

The parties stipulate and the Court orders that family support shall be modified to the amount of \$4,000.00 per month .... The parties further stipulate and the Court orders that Robert shall pay to Gail, as additional family support, thirty percent of any bonus he receives up to \$200,000.00 and forty percent of any bonus he receives above \$200,000.00.

Robert paid Gail \$4000 per month through October 31, 2015. He did not, however, pay any “additional” family support that was to be based on a percentage of his 2015 bonus. Instead, on January 12, 2016, Robert moved the court to modify the “divorce judgment with respect to family support and related issues,” seeking in effect a determination that all of his family support obligations had ended on October 31, 2015, and that he therefore owed no portion of his 2015 year-end bonus as additional family support.

The circuit court denied Robert’s motion. It reasoned that the MSA was not ambiguous, that it required Robert to pay a portion of his 2015 bonus that had accrued up to October 31, 2015 (i.e., ten out of twelve months, or five-sixths of the bonus), and that he had until January 31, 2016, to pay it. Robert appeals.

#### STANDARD OF REVIEW

Although neither party asserts that the MSA is ambiguous, whether it is ambiguous is a question of law that we review de novo. *Wagner v. Estate of Sobczak*, 2011 WI App 159, ¶7, 338 Wis. 2d 92, 808 N.W.2d 167. When there is no ambiguity, interpreting an MSA is also a matter of law, and we review the circuit court’s ruling de novo. *Thurston v. Burnett & Beaver Dam Farmers’ Mut. Fire Ins. Co.*, 98 Wis. 476, 478-79, 74 N.W.131 (1898).<sup>2</sup>

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<sup>2</sup> Robert’s motion was to modify a support obligation under WIS. STAT. § 767.59. (Robert’s motion mistakenly cited WIS. STAT. § 767.481.) A party seeking modification must show that there has been a “substantial change” in circumstances warranting the modification. Sec. 767.59(1f). Whether there has been a substantial change is a mixed question of fact and law. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 32-33, 577 N.W.2d 32 (Ct. App. 1998). However, Robert never sought to show a substantial change in circumstances and, instead, argued that the court should enforce the MSA as written, but using his interpretation. As such, the issue is the interpretation of an unambiguous contract, which is a question of law.

## DISCUSSION

There is no dispute that Robert's monthly \$4000 payment obligation ended on October 31, 2015. Robert argues, however, that the MSA also ended on October 31 his additional obligation to pay a portion of his 2015 bonus. Robert relies in particular on the following language of the MSA:

[Gail] agrees that maintenance to her and family support to her shall terminate eight (8) years and six (6) months following the granting of the Judgment of Divorce, and the Court is without jurisdiction to extend the length of the payments for family support or maintenance beyond that time.

Because the MSA terminates family support eight years and six months after the divorce (which is October 31, 2015), and because any payment of Robert's 2015 bonus was not due to be paid until January 31, 2016, Robert argues that he owes no 2015 bonus payment and that the circuit court was without jurisdiction to extend his obligation past October 31. We disagree.

Stipulated agreements in divorce actions are contractual in nature. *Kastelic v. Kastelic*, 119 Wis. 2d 280, 287, 350 N.W.2d 714 (Ct. App. 1984). As with other contracts, an MSA should be interpreted with the aim to ascertain the intent of the parties; the "best indication of the parties' intent is the language of the document itself." *Wagner*, 338 Wis. 2d 92, ¶7; *Topolski v. Topolski*, 2011 WI 59, ¶33, 335 Wis. 2d 327, 802 N.W.2d 482. Words and phrases are to be given their plain and ordinary meaning unless it has a technical meaning. *Wagner*, 338 Wis. 2d 92, ¶7. We will not insert what has been omitted or rewrite the language of the MSA. *Id.*, ¶10.

The MSA required Robert to make two types of payments. One was for a sum certain each month—originally \$3250, then increased to \$4000—to be paid until October 31, 2015. There is no dispute regarding these monthly payments.

The other type of payment was characterized as an “additional” payment and was based on a percentage of the total annual income earned by Robert. Originally, the additional payment was thirty percent of any annual income above \$108,000. Because Robert’s annual income, by definition, could not be known until the end of the year, the MSA gave him until January 31 of the following year to calculate and make the additional payment.

By stipulation, the parties amended the formula of the additional payment. Rather than being based on income in excess of \$108,000, the additional payment was now to be based on Robert’s annual bonus. The amendment did not alter the January 31 payment deadline. This makes sense because, as with the prior formula, Robert’s additional payment was based on an *annual* figure, which could not be known until the end of the year.

The underlying premise of the MSA payment obligations is that Robert must make payments based on the “annual income earned by” him through October 31, 2015. Robert does not dispute that this is true with respect to the \$4000 monthly payments. We find nothing in the MSA that suggests that the additional payment should be treated any differently. Robert earned his 2015 bonus for the work he performed throughout the year, including the first ten months of the year. The MSA plainly contemplated that a percentage of the bonus earned by Robert up to October 31, 2015, would be paid as “additional” family support. Thus, the circuit court correctly concluded that the MSA required Robert to pay five-sixths (ten out of twelve months) of his 2015 bonus.

Robert’s position hinges on the fact that any 2015 bonus payment would not have to be made until after the family support obligations ended on October 31, 2015—any bonus payment was not due until January 31, 2016. His position is wholly without merit. Robert conflates two

distinct dates: the date used to determine *how much* of his 2015 overall income must be paid to Gail (October 31) and the administrative date used as the deadline to *issue* that payment (January 31). The only reason that the 2015 bonus payment was not due on October 31 is that the bonus was not awarded until the end of the year, making it impossible to pay by October 31.

Robert's reliance on the MSA language stating that the circuit court was without jurisdiction to extend the length of payments beyond October 31, 2015, is misplaced. As discussed above, the court did not extend the length of payments. Robert only has to make his additional payment out of that portion of the bonus that he earned up to October 31. The court had jurisdiction to so order.<sup>3</sup>

Finally, while Robert emphasizes the agreed-upon length of the payment obligations, i.e., eight years and six months, his interpretation would result in a conflict with that provision. Using his interpretation, the last additional payment would have been based on his 2014 bonus. Gail would have received additional payments based on income earned by Robert for only seven years and eight months (May 2007 through December 2014).

We further conclude that Gail is entitled to attorneys' fees and disbursements based on the MSA, which provides that a court may award fees and disbursements to the "prevailing party" pursuant to WIS. STAT. § 767.241. Accordingly, we remand with directions to the circuit court to determine and award, pursuant to the MSA, the reasonable attorneys' fees and disbursements incurred by Gail in this appeal.

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<sup>3</sup> Another provision of the MSA makes clear that the court would retain jurisdiction until the payments based on percentages were determined. "The Court shall retain jurisdiction of determining [Robert's] annual income ... and the 30% due to [Gail] ...."

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to  
WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*