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**DISTRICT III**

May 8, 2018

To:

Hon. Edward F. Vlack III  
Circuit Court Judge  
St. Croix County Courthouse  
1101 Carmichael Road  
Hudson, WI 54016

Kristi Severson  
Clerk of Circuit Court  
St. Croix County Courthouse  
1101 Carmichael Road  
Hudson, WI 54016

Kenneth William Hollern  
W5191 810th Avenue  
Spring Valley, WI 54767

Lisa Marie Hollern  
1245 Rich River Way  
New Richmond, WI 54017

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

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2016AP2472

Kenneth William Hollern v. Lisa Marie Hollern  
(L. C. No. 2013FA168)

Before Stark, P.J., Hruz and Seidl, JJ.

**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).**

Kenneth Hollern, pro se, appeals an order denying a motion to terminate or modify maintenance based on a substantial change in circumstances. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup>

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

Kenneth and Lisa Hollern were divorced on January 21, 2014. The divorce judgment incorporated a Marital Settlement Agreement (MSA) providing that Kenneth would pay \$700 monthly maintenance commencing on February 1, 2014. The MSA further stated:

B. The maintenance shall terminate on 5/29/2021 ([minor child]'s 18<sup>th</sup> birthday), or earlier, upon the death of either party or the remarriage of [Lisa]. Said maintenance payments shall not be modifiable in either duration or amount and shall not be subject to revision by WIS. STAT. § 767.59.

Lisa began cohabitating with another man in June 2016. Kenneth subsequently moved to terminate or reduce maintenance based on a substantial change in circumstances. The circuit court denied the motion, concluding that Kenneth “asks this court to do exactly what he agreed not to do—seek a modification of his maintenance obligation under the substantial change of circumstances analysis set forth in WIS. STAT. § 767.59.” The court found that Kenneth was represented by counsel at the divorce hearing, and it noted there was no argument that the MSA was against public policy or ambiguous. The court stated Kenneth “cannot now complain maintenance payments are unfair or that a substantial change in circumstances warrants relief.” Citing *Rosplock v. Rosplock*, 217 Wis. 2d 22, 31, 577 N.W.2d 32 (Ct. App. 1998), the court concluded Kenneth may not use “the mechanism of construction to review an unambiguous contract in order to relieve a party from any disadvantageous terms to which the party has agreed.” Kenneth now appeals.

A stipulation incorporated into a divorce judgment is in the nature of a contract. *Id.* at 30. The construction of a written contract presents a question of law that we decide independently. *Id.* When a contract is plain and unambiguous, we will construe it as it stands. *Id.* at 37. In short, a court will not rewrite a clear and unambiguous contract. *Id.*

In *Rintelman v. Rintelman*, 118 Wis. 2d 587, 348 N.W.2d 498 (1984), our supreme court recognized an exception to the general rule that maintenance is always subject to modification, when it held that a party is estopped from seeking modification of the terms of a stipulation incorporated into a divorce judgment if

both parties entered into the stipulation freely and knowingly[,] ... the overall settlement is fair and equitable, and not illegal or against public policy, and ... one party subsequently seeks to be released from the terms of the court order on the grounds that the court could not have entered the order it did without the parties' agreement.

*Id.* at 596-98. Thus, *Rintelman* stands for the proposition that the contractual consent of the parties to nonmodifiable maintenance makes such a maintenance provision in a divorce judgment enforceable notwithstanding provisions in the Wisconsin Statutes that maintenance is always subject to modification. See *Nichols v. Nichols*, 162 Wis. 2d 96, 105, 469 N.W.2d 619 (1991).

Kenneth concedes the MSA is “non-modifiable per [the substantial change of circumstances analysis set forth in] WIS. STAT. § 767.59.” However, Kenneth contends the MSA here does not require its modification in order to terminate maintenance. He insists all that is required is an “interpretation of cohabitation as remarriage” consistent with *Taake v. Taake*, 70 Wis. 2d 115, 233 N.W.2d 449 (1975), and *Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 327 N.W.2d 674 (1983). Kenneth also claims he did not freely and knowingly enter into the MSA, such that the applicability of *Rintelman* “is dubious.” Kenneth asserts he is not asking that language in his MSA be “ignored, changed, or struck.” Rather, he claims to be requesting that language in the MSA “be recognized and interpreted fairly.” We reject Kenneth’s arguments.

Here, the MSA provision relating to non-modifiable maintenance could have provided that maintenance would terminate on Lisa’s cohabitation without marriage. See, e.g., *Patrickus*

*v. Patrickus*, 2000 WI App 255, ¶2 & n.1, 239 Wis. 2d 340, 620 N.W.2d 205. However, it did not; the MSA in the present case refers only to “remarriage.” In addition, Kenneth represented in the MSA that he entered into the agreement of his “own volition with full knowledge and information,” and he affirmed “the terms and conditions to be fair and reasonable ....” As the circuit court also properly observed, Kenneth was represented by counsel at the divorce hearing, and no argument was raised that the MSA was ambiguous or violated public policy. Under these circumstances, we agree with the circuit court that Kenneth cannot now complain his limited-term maintenance payments are unfair or that a substantial change in circumstances warrants relief.

Kenneth’s reliance on *Taake* and *Van Gorder* is also misplaced. Those cases predated *Rintelman* and did not involve a stipulation of the parties that rendered maintenance to be non-modifiable. Accordingly, Kenneth may not make alternative arguments for construction to review an unambiguous contract in order to relieve him from allegedly disadvantageous terms to which he agreed.

Therefore,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*