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**DISTRICT II**

May 15, 2013

To:

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

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2013AP67-FT

In re the marriage of: Patrick J. Curran v. Maria Curran  
(L.C. # 2006FA749)

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

Patrick J. Curran appeals from a circuit court order denying his motion to terminate Section 71 payments to his ex-wife Maria Curran. Pursuant to a presubmission conference and this court's order of February 5, 2013, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2011-12).<sup>1</sup> Upon review of those memoranda and the record, we affirm the order of the circuit court.

Patrick and Maria Curran were divorced in August 2008. By stipulation, the parties permanently waived maintenance and entered into a Section 71 agreement. The agreement

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

requires Patrick to make monthly payments to Maria for a period of ten years or until the death of either party or Maria's remarriage. It also expressly provides that payments are not subject to revision.<sup>2</sup>

In January 2012, Patrick filed a motion to terminate the Section 71 payments because Maria had been engaging in a "marriage-like relationship" (i.e., cohabitating) that was akin to remarriage. Following a de novo review hearing on the matter, the circuit court denied Patrick's motion. This appeal follows.

On appeal, Patrick contends that the circuit court erred in denying his motion to terminate the Section 71 payments. Patrick submits that the term "remarriage" in the parties' agreement should be understood to include a "marriage-like relationship" like cohabitating. In support of this argument, he relies on *Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 196-97, 327 N.W.2d 674 (1983), which recognized that cohabitation is a factor to be considered in reviewing maintenance awards.

The problem with Patrick's argument is that this is not a maintenance case. Indeed, the parties agreed that by entering the Section 71 agreement, they waived any right to obtain or modify maintenance. As a result, considerations present in maintenance review cases like *Van Gorder* simply do not apply.

What is important is the parties' intent when they entered into their agreement. The best indicator of that intent is the language of the agreement itself. *Town Bank v. City Real Estate*

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<sup>2</sup> This is consistent with WIS. STAT. § 767.59(1c)(b), which states, "A court may not revise or modify a judgment or order that waives maintenance payments for either party or a judgment or order with respect to final division of property."

*Dev., LLC*, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. We construe this language according to its plain or ordinary meaning. *Id.* The construction of a written agreement presents a question of law which we review de novo. See *Krieman v. Goldberg*, 214 Wis. 2d 163, 173, 571 N.W.2d 425 (Ct. App. 1997).

Here, the parties' Section 71 agreement requires Patrick to make monthly payments to Maria for a period of ten years or until the death of either party or Maria's remarriage. We view the plain or ordinary meaning of the term "remarriage" to refer to a legally valid marriage. Upon remarriage, Maria will acquire significant rights and obligations that she currently does not have by cohabitating. See *Appling v. Doyle*, 2013 WI App 3, ¶88, 345 Wis. 2d 762, 826 N.W.2d 666 (listing various rights and obligations that go with marriage).

To be sure, the parties could have bargained for the termination of Section 71 payments upon a "marriage-like relationship" or cohabitating. However, they did not, and Patrick, as scrivener, did not include such language in the agreement. Because neither he nor this court is permitted to revise the agreement now, we must reject Patrick's argument and affirm the order of the circuit court.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

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