

Summary of SC91498, *Robert J. Simpson v. Rowena A. Simpson*

Appeal from the St. Louis County circuit court, Judge Thomas J. Prebil

Argued and submitted September 14, 2011; opinion issued October 4, 2011

Judges Rachel Bringer, a judge of the 10th Judicial Circuit, and Brian C. Wimes, a judge of the 16th Judicial Circuit, participated in this case by special designation to fill the vacancy on the Court and to replace Judge William Ray Price, Jr., who was not participating.

Attorneys: Edward D. Robertson, Jr., of Bartimus, Frickleton, Robertson & Gorny, P.C., in Jefferson City, (573) 659-4454, argued for Robert J. Simpson; and Gerard Carmody of Carmody MacDonald in Clayton, (314) 854-8673, argued for Rowena Simpson.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An ex-husband appeals the dismissal by the trial court of his motion to terminate maintenance because of his former wife's remarriage. In an opinion written by Judge Zel M. Fischer and joined in by all participating judges, the Supreme Court of Missouri affirms the trial court's judgment. The Court holds that the presumption that an obligation to pay maintenance is terminated by remarriage of the party receiving maintenance can be overcome by an agreement in writing between the parties that expressly extends said obligation. In this case, the agreement between Husband and Wife at the time the dissolution of marriage was entered was sufficient to overcome the statutory presumption of § 452.370, RSMo 2000.

Facts: The marriage of Robert J. Simpson (Husband) and Rowena A. Simpson (Wife) was dissolved after they agreed to a marital settlement and separation agreement. As part of the agreement, Husband was required to pay Wife monthly maintenance in the amount of \$12,000 for 15 years. The parties agreed that the payments would end before the end of the 15-year time period "only in the event of the death of either party." When Wife remarried, Husband filed a motion asking the trial court to terminate his obligation to pay Wife maintenance pursuant to § 452.370, RSMo 2000. Wife moved to dismiss Husband's motion citing the language in the separation agreement. The trial court dismissed Husband's motion, finding that remarriage did not terminate Husband's duty to pay maintenance. Husband appeals.

AFFIRMED.

Court en banc holds: Section 452.370 plainly and clearly gives two alternatives for how its presumption can be overcome; the presumption can be overcome either by the parties agreeing in writing or by the court expressly providing that it is overcome in the judgment. The word "only," which is used in the written separation agreement between

Husband and Wife, excludes all other possible terminating events including Wife's remarriage. For this reason, the use of the word "only" is sufficient to overcome the statutory presumption of § 452.370. That presumption can be overcome by an agreement in writing between the parties that expressly extends said obligation. To the degree that *In re Estate of Mackie*, 261 S.W.3d 728, 731 (Mo. App. 2008), and other opinions by the court of appeals conflict with this holding, those opinions should no longer be followed.