

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000936-MR

BERNEDETTE CROSS (NOW HOWARD)

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DONNA L. DELAHANTY, JUDGE
ACTION NO. 92-CI-03530

GEOFFREY CROSS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Bernedette Cross appeals the October 23, 2008, order of the Jefferson Circuit Court finding that the parties' separation agreement does not entitle Bernedette to survivorship benefits under her ex-husband, Geoffrey

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Cross's, pension plan. Because we hold that the trial court's interpretation of the parties' separation agreement was correct, we affirm.

The parties were married in the United Kingdom in 1970. For a period of six years during the marriage, Geoffrey was employed by ICL, a British company, domiciled in the United Kingdom. The parties were divorced by the trial court via a decree of dissolution entered on December 30, 1993. At the time the parties divorced, Geoffrey was vested in the ICL pension plan, and it was in pay status. The parties had entered into a property settlement agreement which was incorporated by reference into the decree. One provision of that agreement provided that Bernedette would receive one-third of Geoffrey's remaining ICL pension and further states: "[i]n the event that there are any spousal death benefits, residual beneficiary benefits or other benefits existing under the terms of said pension, then in such event Mr. Cross shall name Mrs. Cross as the sole irrevocable beneficiary of all such benefits." The agreement required that the pension division be accomplished by a Qualified Domestic Relations Order (QDRO). No QDRO was ever prepared in regard to the ICL pension. However, Geoffrey has been receiving the full pension amount and paying Bernedette's one-third share directly to her.

In February of 2008, Bernedette filed a motion and affidavit, asserting that she had recently been informed that the ICL pension plan would not allow her to be a surviving spouse entitled to survivorship benefits. Instead, the plan provided that Geoffrey's current wife would be entitled to any spousal death

benefits. Bernedette requested that Geoffrey be required to purchase and maintain a life insurance policy or to fund an annuity naming her as the beneficiary and also requested that he be held in contempt for not already doing so. Geoffrey filed a motion to deny relief. The trial court, determining that the issues were purely legal, requested that the parties submit written briefs. On October 23, 2008, an order was entered in which the trial court found that the plain language of the agreement established that Bernedette would only receive benefits for which she was eligible under the plan, that the ICL pension did not provide any surviving spouse benefits for Bernedette, and therefore Bernedette was not entitled to the value of any benefits.

Bernedette filed a motion to alter, amend, or vacate the trial court's order, and Geoffrey filed a response. The trial court heard arguments from the parties, regarding the motion to alter, amend, or vacate, and subsequently issued an order denying said motion. This appeal followed.

Separation agreements, pursuant to a divorce or legal separation, are governed by KRS 403.180. At issue in this case is the trial court's interpretation of the parties' settlement agreement, specifically the provision which relates to Geoffrey's ICL pension. Inquiries as to the construction, operation, and effect of a spousal separation agreement are typically governed by the same rules and provisions applicable to the construction of other contracts. *Richey v. Richey*, 389 S.W.2d 914 (Ky. 1965). The interpretation of a contract is a matter of law which

this court will review *de novo*. *Hunter v. Hunter*, 127 S.W.3d 656 (Ky. App. 2003); *Cinelli v. Ward*, 997 S.W.2d 474 (Ky. App. 1998).

On appeal, Bernedette argues that the trial court improperly interpreted the separation agreement as applying only to death benefits for a former spouse or alternate payee. Bernedette argues that the proper interpretation of the agreement is that she is guaranteed *any* spousal death benefits, regardless of whether they relate to a past or current spouse.

The primary object when interpreting a settlement agreement is to effectuate the intentions of the parties. *See Wilcox v. Wilcox*, 406 S.W.2d 152, 153 (Ky. 1966); *Withers v. Com., Dep't of Transp.*, 656 S.W.2d 747, 749 (Ky. App. 1983). “Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible.” *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986).

When a contract is ambiguous or silent on an essential issue, the interpreting court may consider parole and extrinsic evidence as it relates to the circumstances surrounding the contract’s execution, the objective of the contract, or even the conduct of the parties. *See, e.g., Dennis v. Watson*, 264 S.W.2d 858, 860 (Ky. 1954); *Reynolds Metals Co. v. Barker*, 256 S.W.2d 17, 18 (Ky. 1953); *L.K. Comstock & Co., Inc. v. Becon Constr. Co.*, 932 F.Supp. 948, 965 (E.D.Ky. 1994). Absent any ambiguities, the parties’ intentions must be discerned from the four corners of the document without resort to extrinsic evidence. *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000); *L.K. Comstock*, 932 F.Supp. at 964.

The provision at issue reads in full:

(a) ICL Pension. The parties agree that the balance of Mr. Cross' ICL Pension shall be divided between them by Mr. Cross receiving two-thirds of same and Mrs. Cross receiving one-third. It is further agreed that said division shall be by the entry of a Qualified Domestic Relations Order. In the event that there are any spousal death benefits, residual beneficiary benefits or other benefits existing under the terms of said pension, then in such event Mr. Cross shall name Mrs. Cross as the sole irrevocable beneficiary of all such benefits.

Bernedette argues that the trial court improperly focused on the terms of the pension plan, as opposed to the terms of the agreement. She argues that the rules of the pension plan are irrelevant and instead desires a broad interpretation of the agreement provision, which would grant her rights to *any* benefits which arise from the pension. We do not agree. We have reviewed the trial court's order, and we agree with its assessment of the parties' separation agreement. That portion of the order reads as follows:

All United States Courts must consider [the] parties' rights and obligations in regard to pensions pursuant to the Employee Retirement Income Security Act (ERISA). ERISA is a federal act which preempts state laws relating to pensions. ERISA defines and regulates pension plans and sets forth requirements relating to division of pension assets between spouses and other qualifying individuals. There is, however, an exemption to ERISA for employee benefit plans that are maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens. (29 U.S.C.A. Section 1003(b)(4)).

ERISA requires that any division of employee benefit plans be accomplished by a QDRO. In the case at hand, the PSA required that the division of respondent's

pension and any surviving spouse benefit, be accomplished by the entry of a QDRO. Even prior to the entry of the PSA both parties being represented by counsel, knew or should have known ICL Pension Plan was a pension plan maintained outside the United States, and administered under the laws of the United Kingdom. A QDRO would have absolutely no effect in regard to obtaining any benefit from the ICL Plan even if such benefit was available. The Court believes that a QDRO was not prepared or entered in regard to the ICL Plan as the QDRO would have no import.

The PSA requires Respondent to name Petitioner as the sole irrevocable beneficiary in the event that certain benefits exist under the pension plan. Fourteen years later, these benefits do not exist under the ICL Pension Plan. If the ICL Plan, in the future, should provide benefits to an alternate payee or former spouse, then Respondent would be required to take the necessary steps for Petitioner to receive such benefits. This Court has no control over the ICL Plan or the law of the United Kingdom under which the Plan operates. The plain language of the PSA establishes that the parties agreed that Petitioner would receive any spousal benefits for which she was eligible under the plan, not the value of benefits for which she does not qualify. This Court shall not order that Respondent pay to the Petitioner the value of spousal death benefits under the ICL Plan as Petitioner is not entitled to receive such.

To interpret the agreement provision in the manner that Bernedette suggests would imply that Bernedette would be entitled to *any* benefits that existed under the pension plan, irrelevant of their original intent. Such an interpretation would grant Bernedette entitlement to all benefits as they arise, including group insurance offerings or surviving dependant benefits. This broad interpretation does not appear to be the intention of the parties at the time they entered into the agreement. Furthermore, the relief which Bernedette seeks would require Geoffrey

to expend his own money in order to provide her with a benefit which the parties did not previously negotiate, in the form of an annuity or life insurance payout. This does not appear to have been the intention of the parties' either. Instead, the agreement mandates that Geoffrey name Bernedette as the beneficiary of any available benefits, an act, which in this case, is a legal impossibility. Unlike the portion of the agreement provision that pertains to the balance of Geoffrey's ICL pension, the portion that pertains to available spousal death benefits contains the limiting language "*in the event* there are any spousal benefits." As the trial court has already noted, no benefits currently exist which are available to Bernedette. As the agreement does not require any further action from Geoffrey in the event that such benefits are not available, it would be inappropriate for us to do so now.

Accordingly, the trial court's order is affirmed.

ALL CONCUR.

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