# STATE OF MICHIGAN

# COURT OF APPEALS

SCOTT M. ROLLER,

Plaintiff/Counter-Defendant-Appellant,

v

PATRICIA L. ROLLER,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
January 26, 2012

No. 300543
Livingston Circuit Court
LC No. 09-041714-DM

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right from an order interpreting the judgment of divorce's language related to the terms of a qualified domestic relations order (QDRO). Plaintiff also challenges another order, entered separately on the same day, denying plaintiff's motion to hold defendant in contempt for an alleged parenting-time violation. We affirm.

Plaintiff argues that the trial court abused its discretion in declining to find defendant in contempt for a violation of the judgment of divorce. We find that plaintiff has abandoned this issue on appeal by failing to articulate anything other than cursory conclusions and failing to offer any pertinent authority or "meaningful argument on this issue." *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005); *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW2d 325 (2009). Nevertheless, we find that plaintiff's argument is without merit.

Plaintiff's argument relates to the interpretation of the consent judgment of divorce. "A divorce judgment entered by agreement of the parties represents a contract." *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010). "[T]he interpretation of a contract is a question of law reviewed de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact. An unambiguous contract must be enforced according to its terms." *Reed*, 265 Mich App at 141 (citation omitted). The judgment unambiguously provided a detailed parenting-time schedule. Plaintiff argues that a provision of the judgment of divorce allowed the parties' parenting-time coordinator to alter the plain language of the judgment and that defendant's failure to comply with the coordinator's recommended schedule change constituted contempt. We disagree. The provision on which plaintiff relies merely provides that the parenting-time coordinator may help resolve parenting-time or legal-custody

issues "not addressed by" the judgment of divorce. The parenting-time schedule relating to the time at issue was addressed by the judgment of divorce. "If no reasonable person could dispute the meaning of ordinary and plain contract language, the Court must accept and enforce contractual language as written, unless the contract is contrary to law or public policy." *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). Consequently, the trial court did not err in applying the plain meaning of the divorce judgment to preclude the parenting-time coordinator from altering the visitation schedule. See *Reed*, 265 Mich App at 141. Because the plain language of the judgment did not allow the parenting-time coordinator to modify the parenting-time schedule, the trial court did not abuse its discretion in declining to hold defendant in contempt. *Porter v Porter*, 285 Mich App 450, 454-455; 776 NW2d 377 (2009) (discussing the standard of review).

Plaintiff also argues that the trial court erred in its interpretation of the language in the judgment of divorce relating to the entry of a qualified domestic relations order (QDRO). As noted above, a consent judgment of divorce is a contract and interpreted using principles of contract interpretation. *Rose*, 289 Mich App at 49. We review the interpretation of a contract de novo. *Reed*, 265 Mich App at 141.

The judgment of divorce provides, in part:

> That a Qualified Domestic Relations Order (QDRO) shall be entered that will roll the balance from plaintiff's 401(k) (Calty/Toyota Plan) of approximately $44,000 to defendant Patricia Roller's IRA. That approximately $44,000 balance represents what remains after the current loan of approximately $14,000 is paid-in-full from the approximately $58,000 that is currently in the plaintiff's 401(k) account.

The parties disagree about the meaning of the above provision. The trial court found the QDRO provision to be ambiguous and determined that defendant was entitled to the balance of plaintiff's 401(k) after allowing plaintiff to retain the $14,000 loan he would eventually repay—a balance totaling $60,057.89. Plaintiff argues that defendant is only entitled to slightly more than $44,000 because the QDRO provision approximated that this is the amount defendant would receive.

We find that the trial court did not err in determining that the QDRO provision was ambiguous. While the QDRO provision does attempt to approximate the amount defendant will receive, it also confusingly seems to indicate that plaintiff would repay the 401(k) loan with funds from the 401(k). It provides that defendant is entitled to the balance, *after* the loan is repaid. However, it is unclear how the approximation of $44,000 is reached, given that the balance after the loan is repaid would be substantially more than that. Because the QDRO provision is capable of conflicting interpretations, we find that the trial court did not err in finding the provision ambiguous. See *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003).

If a consent judgment is ambiguous, a clarification "is permitted only where no change in the substantive rights of the parties will result from the clarification." *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987). We find that the trial court's clarification of the amount

the QDRO provision was intended to award does not affect the parties' substantive rights; instead, it merely provides a final figure based on an agreed-upon provision. A trial court's clarification of an ambiguity in a consent judgment is reviewed for clear error. See *Bers*, 161 Mich App at 464. Clear error is found "if this Court is left with the definite and firm conviction that a mistake has been made." *Reed*, 265 Mich App at 150.

The trial court considered plaintiff's acknowledgement that he was required to repay the $14,000 loan to his 401(k) account. The trial court also considered evidence that showed that the balance, exclusive of the loan to be repaid, at the time the judgment of divorce was entered was $60,057.89. Based on the terms of the QDRO provision and the testimony of the parties, the trial court determined that the parties intended to award defendant the entirety of the plaintiff's 401(k) balance, which did not include the $14,000 loan that needed to be repaid. The trial court did not clearly error in making this determination. The QDRO provision indicated an intent to award defendant the balance of the 401(k), not taking into account the $14,000 loan that was not actually available because it needed to be repaid by plaintiff. While the parties erroneously estimated that the balance, after accounting for and essentially subtracting the $14,000 loan, would be $44,000, this estimate is not controlling. Plaintiff acknowledged that his proposed QDRO, awarding defendant approximately $44,000, disregarded the language in the QDRO requiring defendant be awarded the balance of the account. At the time judgment was entered, the balance, exclusive of the loan, was $60,057.89. Plaintiff does not dispute this factual finding. Instead, he merely argues that his interpretation should be accepted. We disagree. Based on the testimony and evidence considered by the trial court, its clarification of the QDRO provision does not leave us with a "definite and firm conviction that a mistake has been made." *Reed*, 265 Mich App at 150.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter