

STATE OF MICHIGAN
COURT OF APPEALS

GENWORTH LIFE INSURANCE COMPANY,
Plaintiff,

UNPUBLISHED
January 17, 2012

v

JEANNE PARSONS, as Successor Personal
Representative of the Estate of RANDY J.
PARSONS,

No. 300792
Ingham Circuit Court
LC No. 10-000730-CZ

Defendant-Appellee,
and

DEPARTMENT OF TREASURY,
Defendant-Appellant.

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this interpleader action between appellant Michigan Department of Treasury (MDOT) and appellee Jeanne Parsons, as successor personal representative of the estate of Randy J. Parsons (“the estate” or “appellee”), MDOT appeals as of right an order denying its motion for summary disposition and determining the claimants’ respective rights to the interpleaded fund and the amount due each claimant. We reverse and remand for additional proceedings consistent with this opinion.

I. FACTS

On June 22, 2010, stakeholder Genworth Life Insurance Company filed this interpleader action asking the trial court to determine the appropriate distribution of proceeds from a two-thirds share of a structured settlement annuity. The interpleader action was filed because MDOT and the estate disagreed over the proper interpretation of an October 14, 1994 settlement agreement, with each asserting competing claims to the annuity pursuant to their respective interpretations of the agreement.

The agreement provided the following relevant background information:

This settlement agreement is entered this 14th day of October, 1994, between WILLIAM C. BOWRON, Conservator for Randy J. Parsons ("Debtor"), ILA L. WRIGHT, Personal Representative of the Estate of William H. Wright, deceased ("Wright Estate"), and the STATE OF MICHIGAN, DEPARTMENT OF TREASURY ("State of Michigan").

* * *

On August 10, 1992, Debtor filed a voluntary petition in bankruptcy, Chapter 13, in the Western District of Michigan, being case Number ST 92-04428. This proceeding was subsequently converted to Chapter 7 on March 31, 1993. James W. Boyd, Esq., was appointed as the Trustee of the estate.

The Wright Estate holds a claim against Debtor arising from an automobile accident which occurred in February, 1990. Litigation was commenced in state court and stayed by the bankruptcy filing. Before the stay was imposed, a mediation award of \$260,000 was given to, and rejected by, the Estate. The Wright Estate has commenced an adversary proceeding in the Bankruptcy Court for the Western District of Michigan, being Adversary Number 93-8302, claiming the nondischargeability of its claim in the amount of \$1,440,000.

The State of Michigan holds a claim against Debtor based upon his incarceration in a state correctional facility, pursuant to the State Correctional Facility Reimbursement Act, MCL 800.401, et seq. The claim has been estimated to be in excess of \$400,000 if Debtor serves the full sentence.

Debtor, as the result of the settlement of unrelated litigation, is the recipient of monthly payments under a contract of annuity ("Annuity Contract") from the United Pacific Life Insurance Company ("United Pacific"). These payments constitute his only asset. After extensive litigation, the Bankruptcy Court has entered an Order disallowing Debtor's exemption of this asset. . . .

The parties have reached an agreement which would settle all issues outstanding between them and it is the purpose of this document to detail the terms and conditions of the agreement.

The agreement provided that the proceeds of the annuity were to be divided in equal thirds between the Estate of William Wright, MDOT, and Randy Parsons (collectively, the "agreeing parties"), and contained two provisions under which the amount paid to Randy Parsons and MDOT would be adjusted.¹ The agreement provided that when the appeal of Randy Parsons' conviction was final and his appellate counsel had been paid in full, the remaining two-

¹ The one-third that the Estate of William Wright received under the settlement is not at issue in this case.

thirds share was to be divided as follows: 20 percent to Randy Parsons and 47 percent to MDOT (Adjustment 1). The agreement further provided that following Randy Parsons' release from the state correctional system, the two-thirds share was to be divided as follows: 47 percent to Randy Parsons and 20 percent to MDOT (Adjustment 2). No adjustments were ever made. Randy Parsons died in late August 2004.

MDOT moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the conditions required under Adjustment 1 occurred in November 1996, the date it alleged that Randy Parsons' appellate counsel was paid in full and that it should have received 47 percent of the annuity since that time. It asserted that the agreement was ambiguous and provided extrinsic evidence to show that Randy Parsons' death did not implicate Adjustment 2 because it was not within the meaning of the term "release" as contemplated by the agreeing parties.

The estate responded that Randy Parsons' appellate counsel was never paid in full and, therefore, the condition necessary to trigger Adjustment 1 had not occurred.² It argued that the term "release" was unambiguous, that Randy Parsons' death was a "release," and that Adjustment 2 should have occurred in August 2004.

Following a hearing, the trial court ruled that Randy Parsons' appellate counsel was paid in full as of November 1996 and that the term "release" was unambiguous and included Randy Parsons' death:

As far as the ruling today, I think the only thing I can do is make an interpretation of the word release. And I think it's the common understanding in relation to prison incarceration that it would mean release from confinement in whatever way the person is released; either in a coffin or released from parole. I just don't think I can go back and reform the contract because that's clear. It's when—the triggering event is when Randy Parsons was released from prison.

There is just not any other way to interpret it. I mean, he was clearly released from prison in—probably in a body bag. The parties didn't anticipate he would die prior to his sentences, but in the Attorney General's brief it means when he's completed his maximum term. Well, rarely does anyone serve a maximum term in prison. They're usually considered for parole at the time of their minimum sentence. And so the court interprets . . . that word to mean release from confinement of a state correctional facility.

Thus, the court ruled, from November 1996 to August 2004, MDOT should have received 47 percent and Randy Parsons 20 percent, and from September 2004 forward, MDOT should have received 20 percent and Randy Parsons 47 percent. The trial court adjusted the amount due to each party accordingly.

² The estate does not raise this argument on appeal, and we consider it abandoned. See *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001).

This Court granted MDOT's motion to stay the proceedings below, pending the resolution of this appeal.³ MDOT now appeals.

II. MOTION FOR SUMMARY DISPOSITION

A. STANDARD OF REVIEW

This Court's review is limited to the evidence that was presented to the trial court at the time it decided the motion.⁴ A trial court properly grants a motion brought under MCR 2.116(C)(10) when the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.⁵ A genuine issue of material fact is found to exist "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party."⁶ This Court reviews de novo a trial court's decision whether to grant a motion for summary disposition.⁷ The interpretation of a contract and whether an ambiguity exists in the contract are questions of law that this Court also reviews de novo.⁸

B. LEGAL STANDARDS

A settlement agreement is a contract, governed by the same rules as any other contract.⁹ The primary goal in interpreting a contract is to honor the intent of the parties,¹⁰ and when presented with a dispute, a court must determine what the parties' agreement is and enforce it.¹¹

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." To this rule all others are subordinate. Generally, if the language of a contract is unambiguous, it is to be construed according to its plain meaning.

³ *Genworth Life Ins Co v Parsons*, unpublished order of the Court of Appeals, entered October 29, 2010 (Docket No. 300792).

⁴ *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

⁵ *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007).

⁶ *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

⁷ *Brown*, 478 Mich at 552.

⁸ *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999); *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

⁹ *Reicher v SET Enterprises Inc*, 283 Mich App 657, 663-664; 770 NW2d 902 (2009).

¹⁰ *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003), citing *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994).

¹¹ *Shefman v Auto Owners Ins Co*, 262 Mich App 631, 637; 687 NW2d 300 (2004).

On the other hand, if the language of a contract is ambiguous, courts may consider extrinsic evidence to determine the intent of the parties.^[12]

A contract is ambiguous when two provisions irreconcilably conflict with each other, or when a term is equally susceptible to more than a single meaning.¹³ A term is not rendered ambiguous merely because the parties advance conflicting interpretations¹⁴ or because it is subject to multiple dictionary definitions or understandings.¹⁵ The question is not whether reasonable minds can differ regarding the meaning of the language, but whether the language is “*equally* susceptible to more than a single meaning.”¹⁶

If contractual language is ambiguous, its meaning is a question of fact for the jury to decide.¹⁷ The jury may consider relevant extrinsic evidence, which “is admitted not to add to or detract from the writing, but merely to ascertain what the meaning of the parties is.”¹⁸ Evidence indicating the contemporaneous understanding of the agreeing parties is particularly relevant.¹⁹ If reasonable minds could not disagree regarding the parties’ intent after viewing the extrinsic evidence in the light most favorable to the nonmoving party, then summary disposition is appropriate under MCR 2.116(C)(10).²⁰

C. APPLYING THE LEGAL STANDARDS

The relevant portion of the agreement states as follows:

3. The State of Michigan shall continue to receive a one-third share of the payments due under the Annuity Contract until the Debtor’s appeal of his criminal conviction is completed and the Debtor’s appellate counsel is paid in full for all services and costs rendered. After full payment of appellate counsel fees and costs, the remaining two-thirds share of the annuity payment shall be divided between the State and the Debtor as follows:

¹² *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010) (citations omitted).

¹³ *Coates v Bastion Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

¹⁴ *Genesee Foods Servs, Inc v Meadowbrook, Inc*, 279 Mich App 649, 656; 760 NW2d 259 (2008).

¹⁵ See *Mayor of Lansing v Pub Serv Comm*, 470 Mich 154, 164-166; 680 NW2d 840 (2004) (in the context of statutory ambiguity).

¹⁶ *Id.* at 166 (emphasis in original).

¹⁷ *Klapp*, 468 Mich at 469.

¹⁸ *Id.* at 470 (citation and quotation marks omitted).

¹⁹ *Id.* at 469-470.

²⁰ *Allison*, 481 Mich at 425; *Brown*, 478 Mich at 552.

a. Until the monthly payment due for the month *following the release of the Debtor from the state correctional system*, the State shall receive Forty-Seven Percent (47%) and the Debtor will receive Twenty Percent (20%) of the annuity payment.

b. Commencing with the monthly payment due for the month *following the release of the Debtor from the state correctional system*, the State shall receive Twenty Percent (20%) and the Debtor shall receive Forty-Seven Percent (47%) of the annuity payment.^[21]

Thus, Adjustment 2 would not occur until “the monthly payment due for the month following the release of [Randy Parsons] from the state correctional system.” In other words, Randy Parsons’ release from the state correctional system would trigger Adjustment 2.

As noted in the agreement, Randy Parsons was serving a prison sentence at the time the agreement was reached. Under these circumstances, one would most commonly associate the term “release” with Randy Parsons being discharged or let out of prison. This is the definition that MDOT advances.²² It would include, for example, being let out of prison after serving the requisite sentence or as a result of a successful direct appeal or habeas petition.

Further, the agreement used the term “release” as a noun—“the release”—implying the existence of a person or entity doing the releasing and a person being released. Using this definition, “the release of [Randy Parsons] from the state correctional system” never occurred because Randy Parsons was not let out of prison by an entity. Additionally, the release will never occur because Randy Parsons is deceased.

The estate provides a slightly more expansive definition. Under its definition, death is release from the state correctional system. See Random House Webster’s College Dictionary (1992), p 1098 (defining the noun form of “release” as “a freeing or releasing from confinement, obligation, pain, emotional strain, etc.”). Although somewhat strained, the addition of death as a type of release arguably works in this context, i.e. speaking of Randy Parsons’ body or soul being released from confinement at his death. As the trial court noted, “he was clearly released from prison in—probably in a body bag.” Using this definition, “the release of [Randy Parsons] from the state correctional system” occurred when Randy Parsons died. “He was no longer confined. . . . He was no longer a prisoner. He was free. He was released.”

While both interpretations may be somewhat reasonable, “release” is less susceptible to the estate’s definition. The agreement required that Randy Parsons be released “from the state correctional system,” not from his pain, suffering, or some type of abstract earthly confinement.

²¹ Emphasis added.

²² See Black’s Law Dictionary (8th ed), p 1316 (defining “release” as “The action of freeing or the fact of being freed from restraint or confinement <he became a model citizen after his release from prison>”).

The trial court referred to the state correctional system's release of Randy Parsons' body to his family after his death. However, what the trial court overlooked is that the state correctional system did not release Randy Parsons, it released his body, and the agreement clearly contemplated the release of Randy Parsons, not his body. Accordingly, we conclude that the agreement is unambiguous on this issue. Therefore, the trial court erred in concluding that Randy Parsons' death triggered Adjustment 2, and the trial court should have granted MDOT's motion for summary disposition.

Even assuming that there is some ambiguity concerning the use of the word "release," the proffered evidence failed to establish a genuine issue of material fact regarding how the ambiguity should be resolved. The extrinsic evidence MDOT presented was not disputed by the estate, and it showed that the settling parties did not intend Randy Parsons' death to be a "release" or to trigger Adjustment 2.

In a settlement offer dated January 11, 1994, the attorney representing MDOT's interest proposed dividing the two-thirds share as follows: 10 percent to Randy Parsons and 57 percent to MDOT. She believed that Randy Parsons should receive a small portion of the distribution while incarcerated, "since Mr. Parson's expenses (including psychiatric care) are paid for by the State of Michigan." In addition, she proposed the following:

Once Mr. Parsons is released from prison, the State would agree to a substantial reduction of the amount to be paid to the State, since the Parsons will need his annuity payments to live on. I would recommend that once Mr. Parsons is out of prison, his monthly payments to the State be reduced [from approximately \$1,026] to \$200 per month until his total debt to the State is extinguished.

MDOT presented an April 27, 1984 "Outline of Settlement Terms" memorandum that was prepared by the attorney representing Randy Parsons' interest in the settlement negotiation. The memorandum indicated that the settling parties had agreed to the following:

3. The State of Michigan shall receive a one-third share until the criminal appeal is completed and the Debtor's appellate counsel is paid in full. The State will then receive 47% of the annuity payment and the Debtor will receive 20% so long as Debtor is incarcerated.

4. If Debtor is released from custody of the State, the split shall be reversed and Debtor shall receive 47% and the State shall receive 20%.

The evidence shows that the parties included Adjustment 2 so that Randy Parsons would have money to live on after he was released from prison. The attorney representing MDOT's interest suggested that the adjustment occur "[o]nce Mr. Parsons is released from prison" or "once Mr. Parsons *is out* of prison." She clearly indicated that Adjustment 2 was included because Randy Parsons would need the increased "annuity payments to *live on*" "once [he] is released from prison." The attorney representing Randy Parsons' interest wrote that the payments would not be adjusted "so long as Debtor is incarcerated," but would change "If Debtor is released from custody of the State."

The rationale for including Adjustment 2, that is, to help Randy Parsons *live* on when he *is out* of prison, does not make sense if the parties intended Randy Parsons' death to trigger Adjustment 2. The rationale and his death are not compatible. Considering the above, no reasonable mind could conclude that the agreeing parties intended Randy Parsons' death to be a "release" that triggered Adjustment 2.

We reverse the trial court's decision on MDOT's motion for summary disposition, lift our stay on the proceedings below, and remand to the trial court to adjust or recalculate the amount due under the annuity in accordance with this decision. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ William C. Whitbeck

/s/ Michael J. Kelly