[Cite as *In re Estate of Coppick*, 2023-Ohio-2279.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

In the Estate of: Ben Roger Coppick, Sr., Deceased,	:	Case No. 22CA6
Plaintiff-Appellant.	:	DECISION AND JUDGMENT ENTRY

APPEARANCES:

Kenneth E. Ryan, Athens, Ohio, for Appellant, April Dawn Coppick, Administrator of the Estate of Ben Roger Coppick, Sr.

Adam R. Salisbury, Pomeroy, Ohio, for Appellee, Sherri Coppick, NKA Sherri Bonsu.

Stephanie M. Rawlings, U.S. Attorney, Columbus, Ohio, for Appellee, U.S. Department of Agriculture.

Matthew Scott Coppick, Middleport, Ohio, Appellee, pro se.

Ben Roger Coppick, Jr., Portland, Ohio, Appellee, pro se.

James K. Stanley, Meigs County Prosecuting Attorney, Pomeroy, Ohio, for Appellee, Meigs County Treasurer.[1]

Smith, P.J.

{¶1} Appellant, April Coppick, as Administrator of the Estate of Ben Roger Coppick, Sr., deceased, appeals the judgment of the Meigs County Probate Court

[1]The U.S. Department of Agriculture, Matthew Scott Coppick, Ben Roger Coppick Jr., and the Meigs County Treasurer have not filed appellate briefs and do not appear to be participating on appeal.

which denied her request to sell certain real estate after it determined that said real estate should be excluded from the estate because Ben Roger Coppick, Sr.'s ex-wife, Appellee Sherri Coppick, nka Sherri Bonsu (hereinafter "Bonsu"), retained her survivorship interest in the property after the parties' divorce in 2006. Coppick raises four assignments of error on appeal, contending 1) that the court committed error by interpreting R.C. 5302.20(C) in a manner that is inconsistent with relevant case law; 2) that the court committed error by resorting to the judicial interpretation of the terms of the agreed divorce decree contrary to R.C. 5302.20(C); 3) that the court committed error by finding that the agreed divorce decree expressly states that the survivorship tenancy continues after divorce; and 4) that the court committed error by finding that the decedent's one-half interest in the real estate, the subject of the action, is a non-probate asset and excluded from decedent's probate estate.

{¶2} Because we find, after conducting a de novo review of the record before us, that Bonsu's survivorship interest in the real estate at issue remained intact after her divorce from Coppick, Sr. in 2006, we cannot conclude that the trial court erred in determining that Coppick, Sr.'s one-half interest in the real estate was a non-probate asset that was excluded from his probate estate. Accordingly, we find no merit to any of the arguments raised by Appellant and the judgment of the probate court is affirmed.

FACTS

{¶3} The parties essentially agree on the following facts and procedural history of this matter. Ben Roger Coppick, Sr., now deceased, and Sherri Bonsu were married in 1984 and were granted a warranty deed to their marital home, referred to herein as the Smith Road Property. The warranty deed was dated February 25, 1989 and granted Coppick, Sr. and Bonsu "a joint life estate with remainder over in fee simple to the survivor of them." The two divorced in 2006 and an agreed divorce decree was issued by the Meigs County Common Pleas Court. The provision in the agreed divorce decree addressing the parties' real estate stated as follows:

> The Plaintiff and Defendant are joint owners of the marital home, situated in Bedford Township, Meigs County, Ohio consisting of 2 acres, more or less. The parties shall remain as joint owners of said real estate. The Plaintiff shall have the exclusive right to reside and possess the real estate. The Plaintiff shall be solely responsible for the mortgage on said real estate, holding the Defendant harmless from payment thereon. Said mortgage has a principle balance of approximately $50,000. If said real estate is sold, the Defendant shall receive ½ of the net proceeds, after expenses, of the amount over $50,000.

{¶4} Coppick, Sr. died intestate on April 19, 2020. The parties' daughter, April Coppick (hereinafter "Coppick") was appointed as the administrator of the estate. Coppick filed an inventory and appraisal that included Coppick, Sr.'s one-half interest in the Smith Road Property. The inventory and appraisal were approved by the probate court on October 22, 2020. Coppick then filed a

complaint to sell real estate on March 16, 2021. Bonsu filed an answer to the complaint on April 6, 2021, denying that Coppick, Sr. died seized of an undivided one-half interest in the Smith Road Property and claiming that she held a survivorship tenancy in the property.

{¶5} Thereafter, Coppick was granted leave to file an amended complaint. The amended complaint asserted that R.C. 5302.20(C)(5) terminated Bonsu's survivorship interest in the property and converted her interest to a tenancy in common by operation of law at the time of the divorce. In support of this assertion, Coppick attached a copy of the parties' agreed divorce decree to the amended complaint. The issue was briefed by the parties at the request of the probate court and the probate court held a hearing on April 12, 2022.

{¶6} The probate court issued a judgment entry on April 20, 2022. In the entry, the court explained that it construed the requests before it as a request for declaratory judgment pursuant to R.C. 2721.02.[2] The probate court ultimately determined "[t]hat the 2006 Divorce Decree between Ben Coppick and Sherri Coppick contained language to continue the survivorship tenancy[]" and, as a result, it held that Bonsu had "full survivorship rights to the Smith Road Property" and it denied Coppick's request to sell the real estate.

[2] R.C. 2721.02 provides that "courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. * * * The declaration has the effect of a final judgment or decree."

{¶7} Coppick filed a notice of appeal from the probate court's April 20, 2022, judgment entry, but did not request a copy of the April 12, 2022 hearing transcript. Bonsu subsequently filed a motion to dismiss the appeal, arguing that Coppick had failed to order and file written transcripts as required by App.R. 9(B)(3). Coppick filed a written response on July 15, 2022, opposing the motion to dismiss stating that she found the transcripts unnecessary for resolution of the issues on appeal and that she had alternatively complied with App.R. 9(B)(5)(a) by filing a statement listing the assignments of error she intended to raise. This Court issued an entry on August 3, 2022, denying Bonsu's motion to dismiss, stating that App.R.9(B)(5)(a) permits the filing of a statement listing the assignments of error when an appellant does not intend to include a transcript on appeal and finding that Coppick had filed a notice complying with App.R. 9(B)(5)(a). This matter is now before us for consideration. Coppick has raised four assignments of error for our review.

ASSIGNMENTS OF ERROR

I. THE COURT COMMITTED ERROR BY INTERPRETING R.C. §5302.20(C) IN A MANNER THAT IS INCONSISTENT WITH RELEVANT CASE LAW.

II. THE COURT COMMITTED ERROR BY RESORTING TO JUDICIAL INTERPRETATION OF THE TERMS OF THE AGREED DIVORCE DECREE CONTRARY TO R.C. §5302.20(C).

III. THE COURT COMMITTED ERROR BY FINDING THAT THE AGREED DIVORCE DECREE *EXPRESSLY* STATES THAT THE SURVIVORSHIP TENANCY CONTINUES AFTER DIVORCE.

IV. THE COURT COMMITTED ERROR BY FINDING THAT THE DECEDENT'S ONE-HALF INTEREST IN THE REAL ESTATE, THE SUBJECT OF THE ACTION, IS A NON-PROBATE ASSET AND EXCLUDED FROM DECEDENT'S PROBATE ESTATE.

ASSIGNMENTS OF ERROR I - IV

{¶8} For ease of analysis, we consider Coppick's assignments of error out of order and in conjunction with one another. In her fourth assignment of error, Coppick contends that the probate court committed error by finding that the decedent's one-half interest in the real estate at issue was a non-probate asset that was excluded from decedent's probate estate. She essentially contends that the probate court reached this decision in error primarily by 1) erroneously interpreting R.C. 5302.20(C) in a manner that is inconsistent with relevant case law; 2) erroneously resorting to judicial interpretation of the terms of the agreed divorce decree contrary to R.C. 5302.20(C); and 3) erroneously finding that the agreed divorce decree expressly states that the survivorship tenancy continues after divorce. These three alleged errors form the basis of assignments of error one, two and three.

{¶9} As set forth above, the probate court ultimately construed the matter before it as a request for declaratory judgment. More specifically, the court determined that declaratory judgment was being sought to determine "whether or not [the] 2006 uncontested divorce kept or eliminated the joint survivorship effect in the deed of the 1989 Smith Road Property," or stated another way, "what happens to Ben's ½ ownership interest in the Smith Road Property." Thus, the overarching argument in Coppick's appeal is that the trial court erred in determining the rights of the parties with respect to the Smith Road Property.

Standard of Review for Declaratory Judgment Actions

{¶10} In *Arnott v. Arnott,* the Supreme Court of Ohio considered what it described as the "very narrow legal issue" of "what standard of review an appellate court should employ in reviewing legal issues in a declaratory-judgment action." *Arnott v. Arnott,* 132 Ohio St.3d 401, 2012-Ohio-3208, 972 N.E.2d 586, ¶ 9. In reaching its decision, the Court explained that although "the abuse-of-discretion standard applies to the review of a trial court's holding regarding justiciability," a de novo standard of review should be applied when considering questions of law once a court determines that a matter is appropriate for declaratory judgment. *Id.* at ¶ 13. At issue in *Arnott* was "the determination of the meaning of [] disputed language of [a] trust," which the Court determined was a question of law to be reviewed de novo, likening the process to the interpretation of contract, which the

Court also observed involves a question of law that is reviewed de novo. *Id.* at ¶ 14.

Principles of Statutory Interpretation and Standard of Review

{¶11} At issue in the present case is the application and/or interpretation of R.C. 5302.20(C)(5)[3] in relation to certain language contained in the parties' agreed divorce decree that was issued in 2006. This is the legal question the probate court was determining when it issued its decision declaring the rights and obligations of the parties below in relation to the Smith Road Property. This Court recently observed as follows with respect to statutory interpretation, in general:

> "The Ohio Supreme Court recently explained the initial inquiry when a court interprets a statute as follows:
>
> When we consider the meaning of a statute, our first step is always to determine whether the statute is 'plain and unambiguous.' *State v. Hurd*, 89 Ohio St.3d 616, 618, 734 N.E.2d 365 (2000). If 'the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation,' because 'an unambiguous statute is to be applied, not interpreted.' *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus. Ambiguity, in the sense used in our opinions on statutory interpretation, means that a statutory provision is 'capable of bearing more than one meaning.' *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 16. Without 'an initial finding' of ambiguity, 'inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other

[3]R.C. 5302.20 governs survivorship tenancies and, as pertinent herein, the termination thereof upon divorce.

> factors identified in R.C. 1.49 is inappropriate.' *Id.*; *State v. Brown*, 142 Ohio St.3d 92, 2015-Ohio-486, 28 N.E.3d 81, ¶ 10."[4]

Vulgamore v. Vulgamore, 4th Dist. Pike No. 16CA876, 2017-Ohio-4114, ¶ 18, quoting *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8. Thus, the application or interpretation of R.C. 5302.20(C)(5) presents a question of law that we review independently and without deference to the trial court. *See generally*, *Vulgamore v. Vulgamore* at ¶ 17.

{¶12} In *Vulgamore*, the Supreme Court of Ohio further opined as follows regarding the proper application of a statute that has been determined to be plain and unambiguous:

> We "do not have the authority" to dig deeper than the plain meaning of an unambiguous statute "under the guise of either statutory interpretation or liberal construction." *Morgan v. Adult Parole Auth.*, 68 Ohio St.3d 344, 347, 626 N.E.2d 939 (1994). If we were to brazenly ignore the unambiguous language of a statute, or if we found a statute to be ambiguous only after delving deeply into the history and background of the law's enactment, we would invade the role of the legislature: to write the laws.

Vulgamore at ¶ 8.

[4] R.C. 1.49 is entitled "Aids in construction of ambiguous statutes" and states as follows: If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: (A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The consequences of a particular construction; (F) The administrative construction of the statute."

Principles of Contract Interpretation and Standard of Review

{¶13} In addition to considering the application of the R.C. 5302.20(C)(5) to the present matter, we must also consider the terms of the underlying agreed divorce decree. " 'An agreed divorce decree, like a separation agreement, is an agreement of the parties that is made an order of the court[,]' and contract principles apply to the interpretation of such agreements[.]" *Miller v. Miller*, 9th Dist. Medina No. 10CA0034-M, 2011-Ohio-4299, ¶ 22, quoting *Zimmer v. Zimmer*, 10th Dist. Franklin No. 00AP383, 2001 WL 185356, *2. The interpretation of a written contract is also a matter of law that we review de novo. *See Rudolph v. Viking International Resources Co., Inc.*, 2017-Ohio-7369, 84 N.E.3d 1066, ¶ 33; *Arnott v. Arnott, supra*, at ¶ 14, quoting *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶ 9 (" '[t]he construction of a written contract is a matter of law that we review de novo' "). "Our role is to ascertain and give effect to the intent of the parties, which is presumed to lie in the contract language." *Fox v. Positron Energy Resources Inc.*, 2017-Ohio-8700, 101 N.E.3d 1, ¶ 52 (4th Dist.), citing *Arnott* at ¶ 14. " 'Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.' " *Rudolph* at ¶ 33, quoting *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146, paragraph two of the syllabus

(1978), superseded by statute on other grounds; *Harding v. Viking Internatl. Resources Co., Inc.*, 2013-Ohio-5236, 1 N.E.3d 872, ¶ 12 (4th Dist.).

{¶14} Further, as explained in *Arnott v. Arnott, supra*, the fact that interpretation or construction of a contract, or as here an agreed divorce decree, is raised in a declaratory judgment action "does not change the standard by which an appellate court reviews the case; a court always reviews the issue de novo." *Arnott v. Arnott* at ¶ 15. "Declaratory judgments do not enjoy special insulation from reviewing courts on questions of law." *Id.* As such, we employ a de novo standard of review of the statutory language, the language contained in the agreed divorce decree, and also the overarching request for declaratory judgment.

Summary and Application of Standards of Review

{¶15} Thus, to sum up the above standards and correctly apply them to the issues before us as part of our de novo review, it appears that we are to apply the plain language of R.C. 5302.20(C)(5) as written, assuming that it is clear and unambiguous. If, and only if, an ambiguity is found—meaning that the language used in the statute is capable of bearing more than one meaning—may we then resort to the rules of statutory interpretation. Further, because the question at issue involves the construction of a written contract in the form of an agreed divorce decree we must apply R.C. 5302.20(C)(5) to the language contained in the decree, while giving common words contained in the decree their ordinary meaning, unless

an absurdity would result therefrom, all the while attempting to ascertain and give effect to the intent of the parties, which is presumed to lie in the language contained in the decree.

Legal Analysis

{¶16} As set forth above, Coppick filed a complaint to sell real estate, which was followed by the filing of an amended complaint to sell real estate. The real estate at issue, referred to below as the Smith Road Property, was the marital home of Coppick, Sr. and Bonsu, Coppick's parents. During their marriage, Coppick, Sr. and Bonsu were joint owners of the Smith Road Property, as the deed provided they each had "a joint life estate with remainder over in fee simple to the survivor of them * * *." Coppick, Sr. and Bonsu divorced in 2006. The agreed divorce decree stated as follows regarding the real estate:

> The Plaintiff and Defendant are joint owners of the marital home, situated in Bedford Township, Meigs County, Ohio consisting of 2 acres, more or less. The parties shall remain as joint owners of said real estate. * * *."

R.C. 5302.20 governs survivorship tenancies and provides in pertinent part as follows:

> (C) A survivorship tenancy has the following characteristics or ramifications:
> * * *
> (5) If the entire title to a parcel of real property is held by two survivorship tenants who are married to each other and the marriage is terminated by divorce, annulment, or dissolution of marriage, the title, except as provided in this division, immediately ceases to be a

> survivorship tenancy and becomes a tenancy in common. Each tenant in common of that nature holds an undivided interest in common in the title to the real property, *unless the judgment of divorce, annulment, or dissolution of marriage expressly states that the survivorship tenancy shall continue after termination of the marriage.* The interest of each tenant in common of that nature shall be equal unless otherwise provided in the instrument creating the survivorship tenancy or in the judgment of divorce, annulment, or dissolution of marriage.
>
> If a survivorship tenancy includes one or more survivorship tenants in addition to a husband and wife whose marriage is terminated by divorce, annulment, or dissolution of marriage, the survivorship tenancy is not affected by the divorce, annulment, or dissolution of marriage unless the court alters the interest of the survivorship tenants whose marriage has been terminated. (Emphasis added).

{¶17} Here, we are presented with a question as to what the appropriate definition of "expressly" is in R.C. 5302.20(C)(5), as well as whether the language contained in the parties' agreed divorce decree satisfies the definition of "expressly." Coppick contends that the language contained in the agreed divorce decree did not expressly state that the survivorship tenancy shall continue after termination of the marriage, as required in order to avoid the application of R.C. 5302.20(C)(5). As set forth above, the application of R.C. 5302.20(C)(5) would convert the parties' interests from that of joint owners with rights of survivorship to interests of tenants in common, without any rights of survivorship, by operation of law. Bonsu, however, contends that she retained her survivorship interest in the Smith Road Property despite the parties' divorce by virtue of the language

contained in the agreed divorce decree. That argument was the basis of her objections to the sale of the real estate filed by Coppick below.

{¶18} As set forth above, the court ultimately determined that the language contained in the agreed divorce decree continued the survivorship tenancy and that Bonsu had "full survivorship rights" to the Smith Road Property. Thus, the court held that the property was excluded from the estate and it denied Coppick's complaint to sell the real estate. The court reasoned that the phrase contained in the agreed divorce decree that stated that the parties "shall remain as joint owners" continued the " 'joint life estate' ownership survivorship interest as in the 1989 deed." In reaching its decision, the court found that the language used in the divorce decree constituted "some specific written mention" about survivorship so as to expressly state that Bonsu's survivorship interest continued beyond the divorce. Coppick's first, second and third assignments of error challenge these two findings.

{¶19} In her first assignment of error, Coppick contends that the trial court committed error by interpreting R.C. 5302.20(C) in a manner that is inconsistent with relevant case law. More specifically, she argues that the term "expressly" that is contained in R.C. 5302.20(C)(5) means "in an express manner; in direct or unmistakable terms, the opposite of impliedly," rather than meaning "some specific written mention," as stated by the trial court in reaching its decision.

Coppick argues that although there is no case law in Ohio addressing the definition of the term "expressly" as it is used in R.C. 5302.20(C)(5), there is case law which defines the term "expressly" as the term is used in other statutes, in particular R.C. 3105.18.

{¶20} We initially note that we agree with Coppick's argument that the definition of the term "expressly" should be understood to mean a statement that is direct and unmistakable, made in an express manner, as opposed to made impliedly. Such a definition is not only referenced in case law dealing with other statutes that use the term "expressly," but that definition is also consistent with the term "express" that is found in the most recent edition of Black's Law Dictionary.[5] As such, we find that the trial court failed to properly define the term "expressly" when applying R.C. 5302.20(C)(5). However, although we technically find merit in the argument raised under Coppick's first assignment of error, after conducting a de novo review of this matter and for the reasons that follow, we find the error did not change the outcome of the proceedings and thus, the error was harmless.

{¶21} In her second assignment of error, Coppick contends that the court committed error by resorting to judicial interpretation of the terms of the agreed divorce decree contrary to R.C. 5302.20(C). More specifically, she contends that

[5]Black's Law Dictionary (11th ed. 2019) defines the term "express" as "[c]learly and unmistakably communicated; stated with directness and clarity. Cf. implied."

R.C. 5302.20(C)(5) does not "permit judicial interpretation of the terms of a divorce decree to determine their meaning when the statute requires that the divorce decree 'expressly state' that the survivorship tenancy continues after the divorce, contrary to the general provision that survivorship tenancy is terminated by the divorce." Further, in her third assignment of error, Coppick contends that the court committed error by finding that the agreed divorce decree *expressly* states that the survivorship tenancy continues after the divorce. More specifically, she argues that the term "joint owner," as used in the divorce decree, did not constitute "an explicit, direct and unmistakable term that indicates that the parties intended the survivorship component of their interest in the real estate continues after the divorce." She further questions whether the term "joint owner," as used in the decree, is "open to other interpretations that cause the term to be ambiguous."

{¶22} Reading these two assignments of error in conjunction with one another, Coppick essentially contends that the term "joint owners" can be interpreted more than one way and thus it is ambiguous. Therefore, she argues the divorce decree does not meet the standard set forth in R.C. 5302.20(C)(5) which requires that the decree "expressly" state that the survivorship interest continues. Stated another way, Coppick argues that if the term "joint owners" is ambiguous, the decree does not expressly state in direct and unmistakable terms that the survivorship interest continued post-divorce. For the following reasons, we find no

merit to these assignments of error, which is why we also find that any error on the part of the trial court in defining the term "expressly" was harmless.

{¶23} Again, when construing the terms of a written contract, which exists here in the form of an agreed divorce decree, "[o]ur role is to ascertain and give effect to the intent of the parties, which is presumed to lie in the contract language." *Fox v. Positron Energy Resources Inc.*, *supra*, at ¶ 52, citing *Arnott*, *supra*, at ¶ 14. In carrying out this role, we are instructed to give " '[c]ommon words appearing in a written instrument * * * their ordinary meaning unless manifest absurdity results.' " *Rudolph*, *supra*, at ¶ 33, quoting *Alexander v. Buckeye Pipe Line Co.*, *supra* at paragraph two of the syllabus. A copy of the parties' survivorship deed was attached as an exhibit to the original complaint to sell real estate that was filed by Coppick. The deed to the Smith Road Property granted to Coppick, Sr. and Bonsu "a joint life estate with remainder over in fee simple to the survivor of them * * *." The parties did not challenge below and do not challenge on appeal the fact that Coppick, Sr. and Bonsu both held survivorship rights in the property at the time of their divorce. Moreover, the parties' agreed divorce decree noted the fact that the parties "are joint owners of the marital home" and stated that "[t]he parties shall remain as joint owners of said real estate." The probate court reasoned that "the 2006 divorce [decree] term of 'shall remain joint owners' continued the 'joint life estate' ownership survivorship

interest as in the 1989 deed." In reaching its decision, the probate court relied on the fact that the term "remain" is defined in the Merriam-Webster dictionary as "to continue unchanged."

{¶24} As set forth above, the trial court held that this statement constituted "some specific written mention" that expressly continued Bonsu's survivorship interest. Although we agree with Coppick that "some specific written mention" is not the standard contemplated by the General Assembly by inclusion of the term "expressly" in R.C. 5302.20(C)(5), we nevertheless find that the language used in the divorce decree expressly states in direct and unmistakable terms that the interest held by the parties pre-divorce was to remain unchanged after the divorce. Further, because the fact that the parties each held survivorship interests in the property prior to the divorce is without question, we conclude the language is clear.

{¶25} Coppick's arguments essentially suggest that we must check all common sense at the door and consider the term "joint owner" in complete isolation. However, as set forth above, in construing a written agreement we are instructed that " '[c]ommon words appearing in a written instrument will be given their ordinary meaning *unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument*.' " *Rudolph*, *supra*, at ¶ 33, quoting *Alexander v. Buckeye Pipe Line Co., supra*. Thus,

a certain degree of common sense can be utilized when construing written agreements.

{¶26} Here, Bonsu argues that the operative word in the divorce decree is "remain." We cannot disagree that affording the common meaning to the term "remain" leads to the conclusion that the parties intended that their post-decree ownership interests were to be identical to their pre-divorce ownership interests. Stated another way, their ownership interests were "to continue unchanged," as determined by the probate court. Moreover, we find that the use of the word "joint" in conjunction with the word "owner" to be an operative word as well. The record is clear that the parties held "joint" life estates with rights of survivorship prior to the divorce and in the agreed divorce decree, the trial court noted that the parties were, at the time, "joint" owners. The decree also provided that the parties were to *remain* "joint" owners.

{¶27} Coppick argues that the term "joint owners," as used in the divorce decree, could just as easily have meant that the parties were to become tenants in common post-divorce and therefore, the term is ambiguous rather than "direct and unmistakable." However, we find no support for such a construction when taking into consideration the overall contents of the instrument. We find it to be pertinent that Black's Law Dictionary states that "[a] joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share."

(11th ed. 2019). In contrast, Black's Law Dictionary defines "tenancy in common" as "[a] tenancy by two or more persons, in equal or unequal undivided shares, each person having equal right to possess the whole property but no right of survivorship." (11th ed. 2019). We conclude that construing the language of the divorce decree to state that the parties would be tenants in common post-divorce essentially requires us to ignore the use of the words "joint owners" and "remain," which were clearly used to describe the parties' current and continued interests.

{¶28} In light of the foregoing, we find no merit in Coppick's argument that the term "joint owner" was ambiguous or that the term could just as easily be construed to mean "tenant in common." In our view, there is nothing in the rest of the divorce decree, as a whole, that supports such an interpretation. Moreover, we reject Coppick's argument that the mere act of "interpreting" or "construing" the language of the agreed divorce decree in order to give effect to the intent of the parties means that the decree is ambiguous and therefore unable to meet the statutory requirements of R.C. 5302.20(C)(5). Thus, having found no merit in the arguments raised under Coppick's second and third assignments, they are both overruled. Further, as mentioned above, despite finding some merit to Coppick's first assignment of error, in light of our disposition of Coppick's second and third assignments of error, we find the error committed by the trial court to be harmless.

{¶29} Finally, we come full circle to our initial consideration of Coppick's fourth assignment of error, which is the overarching contention that the trial court ultimately erred in finding that the decedent's one-half interest in the real estate is a non-probate asset that is excluded from the decedent's probate estate. Coppick more specifically argues under her fourth assignment of error that the term "joint owner" as used in the divorce decree does not "meet the requirements of R.C. 5302.20(C)(5) to find that the survivorship interests of the parties to the divorce continue after their divorce when the proper standard set forth in R.C. 5302.20(C)(5) is applied, thus excluding the decedent's interest from his probate estate."

{¶30} As set forth above, we have already found that although the trial court technically erred by utilizing an incorrect definition of the term "expressly," the error was harmless because the language used in the divorce decree nevertheless constituted a direct and unmistakable statement, and thus an express statement, that the parties' survivorship interests in the Smith Road Property would continue after the divorce. We have further found that the probate court did not err in interpreting the language of the divorce decree in such a manner as to hold that the survivorship interests continued. Additionally, we have found 1) that neither the probate court nor this Court are required to divorce all common sense from the process of attempting to interpret or construct the terms of the agreed divorce

decree; and 2) that the act of "interpreting" or "constructing" the language contained in the decree does not automatically render the decree ambiguous. In light of these findings, we cannot conclude that the trial court ultimately erred by finding that the decedent's one-half interest in the Smith Road Property is a non-probate asset that must be excluded from the decedent's probate estate. Thus, we conclude Coppick's fourth assignment of error is also without merit and it is overruled.

{¶31} Having found only harmless error in relation to Coppick's first assignment of error and having overruled Coppick's second, third and fourth assignments of error, we find that the judgment of the probate court should be affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Probate Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.