Cite as 2023 Ark. App. 492

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-22-511

CHARLES L. GRANT APPELLANT	Opinion Delivered November 1, 2023
V.	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, TWELFTH DIVISION [NO. 60DR-99-3015]
EILEEN N. GRANT APPELLEE	HONORABLE ALICE S. GRAY, JUDGE
	AFFIRMED

N. MARK KLAPPENBACH, Judge

Charles Grant appeals an order of the Pulaski County Circuit Court interpreting the parties' property-settlement agreement and requiring him to reimburse appellee Eileen Grant. On appeal, Charles argues that the circuit court modified the agreement without jurisdiction and erred in its interpretation. We affirm.

The parties were divorced in 1999 after a thirty-one-year marriage. Charles served in the United States Air Force from the time the parties married until his retirement in 1993. Eileen worked for the civil service before and after the divorce. The parties entered into a property-settlement agreement that was incorporated into the divorce decree. The agreement divided the marital home, personal property, debts, and retirement accounts. The retirement portion of the agreement provided as follows:

> 6. Retirement. Each party has a retirement plan.
>
> [Eileen] makes no claim on the FERS retirement of [Charles].
>
> [Charles] is entitled [to] fifty percent (50%) of the civil service retirement of [Eileen]. A Qualified Domestic Relations Order will be entered herein by separate document.
>
> Each party waives any interest in the thrift savings plan of the other party.
>
> 7. Military Retirement. The parties were married February 26, 1968. The parties were married for longer than twenty (20) years during which time [Charles] served on active duty with the Air Force. [Eileen] is entitled to 50% of the disposable military retirement pay of [Charles] as division of property and not as alimony.

In July 2020, Eileen filed a "Motion for Retirement Order and Motion for Refund." She stated that no qualified domestic relations order regarding Charles's award of 50 percent of her civil-service retirement was ever entered. She alleged that although Charles was awarded only one-half of her retirement that existed at the time of the divorce, Charles had been receiving one-half of her total retirement benefits, including the benefits that accrued after the date of divorce. Eileen had worked for the civil service for seventeen years during the parties' marriage and had continued to work for the civil service for sixteen years after the divorce, but she argued that Charles was not awarded a percentage of benefits earned after the divorce. She requested that the court enter an order specifying that Charles was awarded only one-half of the benefits that existed on the date of the divorce and ordering Charles to refund to her all sums he received in excess of that award.

After two hearings and two rounds of briefing, the circuit court entered an order on April 19, 2022, granting Eileen's motion. The court found that the property-settlement agreement is clear and unambiguous and contemplated only a division of the retirement

benefits that were earned during the parties' marriage and were divisible at the time of the divorce. The court found that the agreement does not state that Charles is also awarded 50 percent of any future civil-service retirement benefits that Eileen would earn after the divorce. The court also noted that by its terms, the property-settlement agreement divided marital property and that no reference was made to either party being awarded nonmarital property of the other party. The court found that since 2015 when Eileen retired, Charles had received $122,106.53 more than he should have received. The court granted Eileen a judgment in that amount and ordered that Charles would not receive any more payments until the judgment had been paid.

We review domestic-relations cases de novo, but we will not reverse a circuit court's finding of fact unless it is clearly erroneous. *Rowan v. Rowan*, 2022 Ark. App. 143, 643 S.W.3d 62. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that the circuit court has made a mistake. *Id.* In reviewing a circuit court's findings of fact, we give due deference to the court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id.*

A court has no authority to modify a separate and independent property-settlement agreement that has been incorporated into a divorce decree. *Id.* However, the agreement is still subject to judicial interpretation, and questions relating to the construction, operation, and effect of independent property-settlement agreements are governed, in general, by the rules and provisions applicable to other contracts generally. *Id.* The first rule of

interpretation of a contract is to give the language employed the meaning that the parties intended. *Buckingham v. Gochnauer*, 2017 Ark. App. 660, 536 S.W.3d 155. In construing any contract, we must consider the sense and meaning of the words used by the parties as they are taken and understood in their plain and ordinary meaning. *Id.* The best construction is that which is made by viewing the subject of the contract as the mass of mankind would view it, as it may be safely assumed that such was the aspect in which the parties themselves viewed it. *Id.* It is also a well-settled rule in construing a contract that the intention of the parties is to be gathered, not from particular words and phrases, but from the whole context of the agreement. *Id.* When a contract is unambiguous, its construction is a question of law for the court. *Evans v. Evans*, 2009 Ark. App. 626. A contract is unambiguous and its construction and legal effect are questions of law when its terms are not susceptible to more than one equally reasonable construction. *Id.*

On appeal, Charles argues that the circuit court's order added language to the decree by calculating his portion of the benefits; thus, he contends that the court modified the decree without jurisdiction to do so. Charles also argues that the circuit court was wrong to rely on the provision in the property-settlement agreement that provides that "[s]aid settlement is a contract and the parties agree that it constitutes their full share of any marital property, real or personal." He disputes the court's finding that "[n]o reference is made to either party being awarded non-marital property from the other or benefits which might be earned by the other after the divorce." He argues that nonmarital property was distributed in the agreement because the agreement states that both parties would retain their premarital

real property. This does not contradict the circuit court's finding, however, that the agreement does not contain any distribution of nonmarital property to the other party.

We hold that the circuit court did not modify the property-settlement agreement. Rather, the court construed the agreement in accordance with the plain meaning of the language employed. The agreement purported to divide marital property, and as Eileen argues, when the agreement was made, all of the retirement benefits of both parties were marital. Accordingly, we hold that the circuit court did not clearly err in finding that the agreement made no distribution of benefits earned after the divorce and instead provided that Charles would receive one-half of the retirement benefits that existed at that time.

Affirmed.

ABRAMSON and THYER, JJ., agree.

Mylissia M. Blankenship, for appellant.

Knollmeyer Law Office, P.A., by: *Michael Knollmeyer*, for appellee.