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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1404**

In re the Marriage of:
Betty Jean Erlandsen, petitioner,
Respondent,

vs.

Stanley L. Erlandsen,
Appellant.

**Filed July 8, 2008
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27FA000169116

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Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant, the estate of respondent's deceased former husband, challenges the district court order holding that the dissolution judgment effectively extended husband's maintenance obligation to respondent beyond his death. Alternatively, appellant asserts that if there is an ongoing maintenance obligation, it is subject to modification. Because the judgment provided that the obligor's post-death maintenance obligation consisted of security providing for payments of defined amounts from defined sources, and because this is not a proper case for modification of an extension of maintenance beyond the obligor's death, we affirm.

FACTS

The marriage of decedent Stanley L. Erlandsen (husband) and respondent Betty Jean Erlandsen (wife) was dissolved in December 1990 by a judgment based on their marital termination agreement. The judgment provided that husband would pay wife maintenance "until [wife's] remarriage or death, whichever occurs first." The judgment further provided that on husband's death, "[husband] is ordered to pay spousal maintenance pursuant to paragraph 4 hereof."

Paragraph four of the judgment is titled "Security for Spousal Maintenance" and provides in relevant part:

[Husband] is ordered to maintain in full force and effect \$75,000 of life insurance payable to [wife] upon his death so long as he has an obligation to her for spousal maintenance

As and for further security, [husband] is ordered to keep and maintain [wife] as beneficiary of 50% of the pension benefits from his University of Minnesota pension remaining at the time of his death, so long as any spousal maintenance obligation remains. Said pension benefits will be paid to [wife] in monthly installments of spousal maintenance for so long as they are owing.

[Husband] is ordered to keep and maintain in full force and effect \$25,000 of additional life insurance . . . payable to [wife] upon his death. . . . If [husband] has not maintained life insurance and pension beneficiary pursuant to this paragraph or order of the Court, [husband's] estate shall cover this obligation.

Husband maintained the required \$25,000 life-insurance policy with wife as beneficiary but did not name her as beneficiary of the \$75,000 life-insurance policy or 50% of his remaining pension benefits as required by the judgment.

After husband's death, wife submitted a claim to the probate court for an amount equal to the \$75,000 life-insurance policy plus the present value of maintenance for her life expectancy at the amount paid by husband during his life.¹ The personal representative of appellant, husband's estate (estate), denied the claim. Estate moved in the dissolution action for a reduction or termination of husband's maintenance obligation based on wife's lack of need.

The district court initially held that the judgment did not effectively provide for maintenance to continue after husband's death and, on that ground, granted estate's motion to terminate husband's maintenance obligation as of the date of his death. Wife

¹ Wife concedes in this appeal that the judgment does not provide for lifetime maintenance in the amount paid before husband's death but rather provides for payment of a defined amount: 50% of husband's pension remaining at the time of his death.

moved to amend the order, citing caselaw that had not been considered at the time of the initial order. The district court granted wife's motion and amended the order, interpreting the judgment to provide for continued maintenance after husband's death, concluding that it was without authority to modify husband's obligation after his death, and granting wife's motion to receive the \$75,000 life-insurance funds and 50% of husband's remaining pension benefits as provided in the judgment. This appeal followed, in which estate challenges only the award of 50% of husband's remaining pension benefits.

D E C I S I O N

Absent ambiguity, it is not proper for a court to interpret a stipulated judgment. *See Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). "Whether language is ambiguous is a question of law to be decided initially by the trial court." *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). "[A] dissolution provision is unambiguous if '[i]ts meaning can be determined without any guide other than knowledge of the facts on which the language depends for meaning.'" *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985) (quoting *Vanderleest v. Vanderleest*, 352 N.W.2d 54, 57 (Minn. App. 1984)).

Estate asserts that the provision for monthly payments of spousal maintenance of 50% of husband's post-death pension-plan benefits is blatantly ambiguous; wife asserts that the provision is not ambiguous. The district court did not expressly conclude that the judgment is ambiguous, but its references to "interpretation" of the judgment imply that it agreed with estate that the judgment is ambiguous. We do not find the provision

ambiguous, but because we agree with the district court's interpretation of the provision, even if the provision is ambiguous the result would not change.²

Husband's post-death maintenance obligation

On appeal, estate first argues that the district court erred by holding that the judgment effectively provided for husband's maintenance obligation to continue after his death. "Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance." Minn. Stat. § 518A.39, subd. 3 (2006). In *Witt v. Witt*, 350 N.W.2d 380, 382 (Minn. App. 1984), this court held that "[i]n order for a decree to expressly provide for maintenance subsequent to obligor's death, the decree must provide funding for the maintenance such as an insurance policy or a lien on property."

The judgment in this case contains an express provision establishing husband's post-death maintenance obligation and identifies funding for the obligation. Estate argues that the pension benefits provision clearly limits wife's interest in the pension benefits to 50% of husband's benefit that remains at his death, but also can be read to require payments from the benefits *for so long as spousal maintenance is owing*, thereby potentially creating a future maintenance obligation for which there is no funding. Estate correctly argues that, under *Witt*, without a funding source, a provision for ongoing

² This case does not involve a requirement for security for maintenance imposed by the district court under Minn. Stat. § 518.24, but rather the interpretation of an agreement between the parties. This opinion does not imply that in every case an award of security for maintenance is an award of ongoing maintenance after an obligor's death.

maintenance after an obligor's death is fatally flawed and cannot be enforced as a post-death maintenance obligation.

We conclude, however, that the provision unambiguously provides for payment of 50% of the pension benefits in monthly installments *only for so long as there are pension benefits owed*. Even if the provision is ambiguous, it would be interpreted to give effect to the clear intentions of the parties. *See Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990) (reiterating from existing case law that “[w]hen the intention of the parties to a contract is totally ascertainable from the writing,” the court will construe a contract to avoid an interpretation that would render a provision meaningless). Here, construing the stipulated judgment as a whole, as the district court did, it is readily ascertainable that the parties intended to provide for husband's post-death maintenance obligation through two life insurance policies plus 50% of husband's remaining interest in his University of Minnesota pension plan. Estate's interpretation of the provision would defeat this clear intention.

Estate also argues that the pension-benefits provision is fatally flawed under *Witt* because the amount of monthly payments and mechanism of payment are not defined. We disagree. *Witt* requires only a funding *source* for a valid provision that a maintenance obligation continue after the obligor's death. *Witt*, 350 N.W.2d at 382. *Witt* specifically noted that funding could be provided through a lien on property, but did not require that a judgment must mandate that the lien be foreclosed or require any other specific mechanism for payment from such a funding source. *Id.* We conclude that failure to

specify the *mechanism* for payment from a funding source does not, under *Witt*, defeat the parties' intent that wife should received the agreed-to funds from the specified source.

Wife argues that the pension-benefits provision, like the life-insurance provisions also contained in paragraph four, is an enforceable security provision similar to the insurance provision analyzed in *Head v. Metro. Life Ins. Co.*, 449 N.W.2d 449, 452-55 (Minn. App. 1989), *review denied* (Minn. Dec. 19, 1989). The dissolution judgment in *Head* required the obligor to maintain “the policy or policies of life insurance available through his employment on himself, naming the [obligee] beneficiary thereof” and gave the obligee a claim on the obligor’s estate for the amount of such insurance proceeds if he failed to do so. 449 N.W.2d at 452. The obligor maintained the required insurance on his life, but made the obligee a co-beneficiary of the proceeds. *Id.* After the obligor’s death, the obligee sued the insurer and co-beneficiary, claiming that under the decree, she was entitled to all of the proceeds of the policies. *Id.* The district court agreed and imposed a constructive trust on the proceeds designated for the named co-beneficiary. *Id.* at 455.

The co-beneficiary appealed, and we affirmed, rejecting the co-beneficiary’s argument that the maintenance-security provision entitled the obligee to no amount greater than was actually necessary to secure maintenance owed at the time of the obligor’s death. *Id.* at 454. We concluded that the maintenance-security provision fulfilled the “statutory mandate that a decree expressly so provide if spousal maintenance is to continue after the obligor’s death” because the judgment provided funding, as required by *Witt*, through insurance proceeds or husband’s estate. *Id.* at 454-55 (citing

Minn. Stat. § 518.64, subd. 3 (1988); *Witt*, 350 N.W.2d at 382). Likewise, in this case, a readily ascertainable amount of security from husband’s remaining interest in the pension plan provides the funding for husband’s post-death maintenance obligation, as required by *Witt*.

Estate argues that “[i]t is very different to be a 50% beneficiary of a defined contribution pension plan than it is to receive monthly installments of spousal maintenance.” But, as stated in paragraph two of the judgment, husband’s post-death maintenance obligation is limited to the provisions of paragraph four, and that paragraph plainly sets ascertainable limits on what wife is to receive as spousal maintenance from the pension plan after husband’s death. Labeling paragraph four “Security for Spousal Maintenance” and calling the monthly payments from husband’s remaining pension benefits “spousal maintenance”³ does not create an ambiguity or contradiction. By the plain language of the judgment, the provisions in paragraph four constitute husband’s post-death maintenance obligation and are consistent with *Head* and *Witt*. The district court did not err in holding that the judgment provided for post-death maintenance and awarding wife a 50% interest in husband’s remaining pension benefits as well as amounts equal to the proceeds of the required life insurance.

Post-death modification of maintenance

Estate argues, in the alternative, that if the judgment effectively provided for post-death maintenance, the district court erred by holding that it lacked authority to modify

³ Wife cogently argues that designating the paragraph-four pension payments to wife as maintenance distinguished these payments from the portion of husband’s pension that wife received in the property division.

the post-death obligation based on wife's lack of need. Estate does not assert that the life insurance benefits are subject to modification, but argues that because the pension benefits are to be paid in monthly installments, the provision for 50% of husband's remaining interest in the pension benefits can be reduced or eliminated depending on wife's need.

We first reject wife's argument that estate does not have the "authority" to move for modification because it was not a party to the dissolution. Wife is essentially challenging estate's standing to bring the motion. Where the relevant facts are undisputed, standing raises a question of law subject to de novo review. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). The judgment in this case creates an obligation on estate, plainly giving estate standing to adjudicate its obligations under the judgment. *See Stieler v. Stieler*, 244 Minn. 312, 320, 70 N.W.2d 127, 132 (1955) (recognizing the right of executor of decedent's estate to be substituted in the place of decedent on motion to clarify an ambiguous dissolution judgment).

Furthermore, we agree with estate that the district court erroneously relied on a quotation from the dissenting opinion in *Head* to conclude that a district court has no authority to modify an obligor's post-death maintenance obligation. The dissent in *Head* quoted *Witt* for the proposition that after obligor's death "the . . . maintenance order became final and not subject to modification or amendment." *Head*, 449 N.W.2d at 456

(citing *Witt*, 350 N.W.2d at 382). The district court's reliance on this statement is erroneous for two reasons: (1) it was taken from a nonprecedential dissent in *Head* and (2) in *Witt*, the statement referred to statutory preclusion of post-death amendment to a maintenance obligation that terminated on the obligor's death. *Witt*, 350 N.W.2d at 382.

Where the maintenance obligation does not terminate on obligor's death, caselaw provides that the district court has authority to modify some maintenance obligations that continue beyond the obligor's death. In 1925, the supreme court held that "in a proper case" there may be a post-death modification of an alimony obligation that extends beyond the death of the obligor. *Gunderson v. Gunderson*, 163 Minn. 236, 237, 203 N.W. 786, 786 (1925) (involving a challenge by five children to continued alimony to former stepmother from their father's estate, which turned out to be valued significantly lower than it was valued in the divorce action). The holding in *Gunderson* was reiterated in *Garber v. Robitshek*, 226 Minn. 398, 401-02, 33 N.W.2d 30, 33 (1948), when the supreme court concluded that because the maintenance obligation in that case survived the obligor's death, the court had "jurisdiction" to amend and modify the provision.

Despite the age of these cases and subsequent changes in the law, the principle that, in a proper case, the district court has authority to modify an ongoing maintenance obligation after the obligor's death remains good law. And in this case, unlike *Head*, the judgment's specific provision for a post-death monthly maintenance payment raises the possibility of post-death modification. Because the total amount of pension benefits wife is entitled to as maintenance is clearly defined, we conclude that, as a matter of law, this

is not a proper case for the exercise of judicial authority to modify a post-death maintenance provision.

Unlike *Gunderson*, this case does not involve the competing interests of support for children and support of an ex-wife from an estate that was overvalued at the time of the marriage dissolution. Unlike *Garber*, this case does not involve the need to distinguish ongoing support for minor children from support for an ex-spouse. Rather, like the life-insurance provisions, the pension-benefits provision provides additional maintenance in a fixed amount for a spouse who was awarded permanent maintenance but who will no longer receive the monthly maintenance awarded due to the obligor's death. Husband negotiated this provision and did not change it during his lifetime. There is no evidence in the record of any change in circumstances that occurred after husband's death that makes the provision unreasonable or unfair.

Head holds that when an obligor's post-death maintenance obligation continues in the form of a security provision, the amount of security need not correlate to the obligee's need or the level of maintenance awarded during the obligor's lifetime. 449 N.W.2d at 453-54. Likewise, in this case, the monthly payments from the pension benefit are not limited to the monthly payments wife received during husband's life or wife's current need. Having concluded that this is not a proper case for an exercise of authority to modify, we affirm the district court's denial of estate's motion to modify.

Affirmed.