

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

JAMES E. LAUGHNER, JR.,	:	OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2010-T-0068
SUZANNE LAUGHNER,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Family Court, Domestic Relations Division, Case No. 1998 DR 61.

Judgment: Reversed.

Thomas E. Schubert, 138 East Market Street, Warren, OH 44481 (For Plaintiff-Appellant).

Thomas E. Zena, 1032 Boardman-Canfield Road, #101 & 103, Youngstown, OH 44512 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, James E. Laughner, Jr., appeals the Judgment Entry of the Trumbull County Family Court, Domestic Relations Division, determining that James' retirement did not automatically end his spousal support obligation and ordering him to pay defendant-appellee, Suzanne Laughner, \$15,600 of past-due spousal support. For the following reasons, we reverse the decision of the trial court.

{¶2} James and Suzanne were married on February 8, 1964. On February 5, 1998, James filed a Complaint for Separation. On October 1, 1998, James filed an Amended Complaint for Divorce.

{¶3} On September 12, 2000, the court issued a Journal Entry of Judgment/Decree of Divorce, granting the divorce on grounds of incompatibility and ordering James to pay \$1,100 in spousal support per month to Suzanne. This amount of spousal support was to continue for ten years, subject to termination due to death, or Suzanne's remarriage. Additionally, the Entry included language stating that James' "obligation to pay spousal support to [Suzanne] would terminate upon [his] retirement from General Motors, due to the fact that the Court hereinafter will adjust the parties' equitable interest in [James'] pension plan so as to equalize the retirement benefits of both" James and Suzanne. The Entry also included a clause stating that James' obligation to pay spousal support was subject to the continuing jurisdiction of the court and would terminate "[t]en (10) years from the date of the final hearing, to-wit: September 28, 1999." At this time, the court would have "no jurisdiction to modify [Suzanne's] spousal support and [James'] responsibility as and for spousal support shall terminate."

{¶4} The court further ordered that a Qualified Domestic Relations Order (QDRO) be prepared, relating to James' pension plan with General Motors (GM), his employer at the time of the divorce. The court ordered that the QDRO "shall grant [Suzanne] the right to participate to the extent that [James] and [Suzanne's] marriage terminated subsequent to [James'] retirement from General Motors, it being the intention of the Court that both parties shall share equally in the total retirement benefits

available to [James] upon his retirement.” The QDRO, filed on November 26, 2002, “assign[ed] to the Alternate Payee, [Suzanne], an amount equal to Fifty Percent (50%) of the Marital Portion of the Participant’s, [James’], Accrued Benefit under the Plan.” Any increase in pension due to retirement was also to be equally shared by James and Suzanne.

{¶5} On November 2, 2000, Suzanne filed a Motion to Vacate the Decree of Divorce, alleging that portions of the Decree related to the termination of spousal support be vacated. In response, the court issued a Judgment Entry, stating that the court would not vacate only portions of the Decree but the entire Decree. This Entry required Suzanne to brief the issue further if she still wanted the Decree to be vacated. No further motions or responses were filed by Suzanne on this issue. On March 19, 2009, the court held that the motion to vacate is deemed overruled, due to Suzanne’s failure to pursue the matter and found that the Decree of Divorce stood as entered by the court on September 12, 2000.

{¶6} Subsequently, Suzanne began to receive a share of James’ pension benefits from GM. When Suzanne began receiving these benefits, in the amount of \$700 per month, James reduced his spousal support payment to \$400 per month, allowing Suzanne to continue receiving a total of \$1,100 per month. In August of 2006, GM determined that under the current QDRO, Suzanne was not eligible to receive benefits until James retired. GM requested that Suzanne return the benefits she had been paid. After litigation throughout 2008, the problem with the GM pension was resolved and Suzanne again began to receive her appropriate share of pension.

{¶7} In July of 2006, James retired from his employment at GM. Upon retirement, James stopped paying Suzanne any amount of spousal support.

{¶8} On August 30, 2006, and on May 1, 2007, Suzanne filed motions with the court, asserting that James had failed to pay spousal support as ordered in the original Entry and Decree of Divorce. In the May 1 motion, she also argued that James had failed to pay the amount her pension check was reduced while the issue with the pension was being resolved, as ordered by the court on September 8, 2006. On January 27, 2009, in Suzanne's Response to Objections to Report of Magistrate, and on March 9, 2009, in Suzanne's Final Argument Summary, she contended that James continued to owe arrearages of spousal support.

{¶9} On March 18, 2010, the trial court held a hearing regarding the matter of spousal support. James and Suzanne testified and both stated that James stopped paying spousal support in July of 2006, upon his retirement from GM. Suzanne testified that she believed James was to continue paying spousal support after he retired, until the parties returned to court to resolve the matter of equalizing their incomes. James testified that he stopped paying support because he felt that the obligation to pay automatically terminated upon his retirement.

{¶10} On April 2, 2010, the magistrate issued a Magistrate's Decision and interpreted "paragraph e" of the spousal support section of the Divorce Decree to mean that Suzanne was to receive spousal support for no more than ten years, subject to contingencies. The magistrate further held that James' retirement was a contingency which did not terminate his obligation to pay spousal support "until the court reviewed the parties' financial circumstances." The court further found that James' retirement did

not automatically end his obligation to pay spousal support and that James should have continued to pay support for the full ten year period, until September 28, 2009. The court ordered James to pay Suzanne “\$400.00 per month (the difference between the \$1,100.00 order and the \$700.00 GM pension) from July, 2006 through September, 2009 *** for a total of \$15,600.00.” On April 16, 2010, James filed Objections to the Magistrate’s Decision. On April 19, 2010, the judge overruled the objections and adopted the Magistrate’s Decision.

{¶11} James timely appeals and asserts the following assignments of error:

{¶12} “[1.] The trial court erred to the prejudice of the Plaintiff/Appellant when it found that his obligation to pay eleven hundred dollars per month in spousal support survived his retirement and the QDRO settlement of all issues related to equalization of pension plan benefits, because it did not retain a right to review spousal support in the original decree of divorce, after ten years, as required by R.C. 3105.18(E)(1).

{¶13} “[2.] The trial court erred to the prejudice of Plaintiff/Appellant when it found that Plaintiff’s spousal support obligation would not terminate upon his retirement, but that the court would retain the power to review the parties’ financial circumstances.

{¶14} “[3.] The trial court erred to the prejudice of [Plaintiff]/Appellant when it exercised jurisdiction over the spousal support issue in this case more than six months after the expiration of its grant of authority in the Decree of Divorce.”

{¶15} As James’ contentions in assignments of error one and three assert the same arguments, we will consider them together.

{¶16} In James’ first assignment of error, he argues that the trial court was without jurisdiction to require James to pay \$1,100 per month in spousal support

because the ruling in this case occurred outside of the ten year jurisdiction set by the trial court in its Decree of Divorce. He argues that the failure to include language reserving jurisdiction to modify spousal support eliminated the court's jurisdiction past the ten year time period stated in the Decree. Similarly, in his third assignment of error, James argues that the court erred in raising the issue of spousal support more than six months after the expiration of the ten year grant of authority in the Decree of Divorce because it did not have jurisdiction.

{¶17} As a general matter, an award of spousal support will be reversed on appeal only if an abuse of discretion is shown. *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 24.

{¶18} R.C. 3105.18 governs a trial court's jurisdiction over spousal support and provides that "the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless" there is a provision specifically authorizing the court to modify the amount or terms of spousal support. R.C. 3105.18(E)(1).

{¶19} In this case, the court would be unable to modify spousal support because there was no change in circumstances that occurred when James retired. It was anticipated by all parties involved that James would retire. However, the court did not modify the spousal support arrangement but instead interpreted the Decree of Divorce regarding the issue of spousal support owed. See *Fabre v. Fabre*, 5th Dist. No. 2007CA00224, 2008-Ohio-5677, at ¶19 (finding that a trial court is not required to determine whether there was a change of circumstances pursuant to the requirements

of R.C. 3105.18(E) when the court interprets the provisions of a judgment entry to make a determination regarding spousal support.)

{¶20} “While a trial court may not modify the terms of the spousal support arrangement unless it reserves jurisdiction in the dissolution decree, a trial court may interpret an ambiguous clause by considering the intent of the parties and the equities involved.” *In re Gonzalez*, 11th Dist. No. 99-L-038, 2000 Ohio App. LEXIS 6193, at *9-10, citing *In re Dissolution of Marriage of Seders* (1987), 42 Ohio App.3d 155, 156. “[I]f there is good faith confusion over the interpretation to be given to a particular clause of a divorce decree, the trial court in enforcing that decree has the power to hear the matter, clarify the confusion, and resolve the dispute.” *LaTour v. LaTour*, 11th Dist. No. 2000-L-071, 2001-Ohio-8677 and 2001-Ohio-8690, 2001 Ohio App. LEXIS 5649, at *4, citing *Quisenberry v. Quisenberry* (1993), 91 Ohio App.3d 341, 348. See *Schumann v. Schumann*, 8th Dist. No. 93382, 2010-Ohio-5472, at ¶44 (although the trial court did not have jurisdiction to modify matters found in the divorce decree, the “court ha[d] broad discretion in clarifying ambiguous language”); *Keeley v. Keeley*, 12th Dist. No. CA97-02-013, 1997 Ohio App. LEXIS 3139, at *3 (“If a provision of a divorce decree is subject to more than one reasonable interpretation, a trial court has jurisdiction to interpret and clarify the decree.”) (citation omitted).

{¶21} The trial court did act to interpret the Decree of Divorce. The court interpreted the clause in paragraph e of the Decree to mean that spousal support did not automatically terminate upon James’ retirement. Therefore, the court was not required to use specific language reserving jurisdiction and no changed circumstances were required for the court to properly have jurisdiction. In this regard, the court would

properly have jurisdiction. However, as will be discussed further, there was no ambiguity for the court to resolve, thus bringing into question whether the court even had jurisdiction to interpret the Divorce Decree at all.

{¶22} Additionally, while the court was acting outside of the ten year time frame to interpret the Decree, this is not the only action that was taken by the court. While a court may continue to exert jurisdiction after the reserved period of time, it appears that the court in this case did more than just interpretation. In determining that James owed back spousal support during the ten year period, the court also made a determination that this amount was necessary to equalize the parties' incomes. The court, in essence, modified the support owed by determining that James should continue to pay support, even though he had retired. Such a decision is prohibited in the terms of the Decree, which states that James' support obligations are subject to the continuing jurisdiction of the court for ten years, starting on September 28, 1999. Thereafter, the court had no jurisdiction to modify spousal support.

{¶23} If the trial court intended to equalize the parties' incomes after James' retirement, the court should have acted to do so within the ten year time period reserved by the Decree of Divorce. The court took no action to do so prior to the April 2, 2010 Magistrate's Decision. Similarly, while Suzanne did file motions asserting that James' failed to pay spousal support, she made no request for the court to equalize the parties' income until March of 2009. If she had done so, the court may have addressed the issue in 2006, when James first stopped paying support. The court failed to make a determination as to this issue until almost four years after James retired and terminated paying support. See *Coder v. Coder*, 2nd Dist. No. 15566, 1996 Ohio App. LEXIS

1931, at *14 (where wife failed to file an appropriate motion with the court within fourteen months and husband failed to pay spousal support because he believed his obligation automatically terminated, the wife's delay prejudiced husband and he did not have to pay arrearages).

{¶24} For the court to make a determination requiring support to be paid outside of the ten year period, and almost four years after James stopped paying support, is prejudicial to James. “[A]n agreement for spousal support that has been entered in a divorce decree by a trial court is entitled to expectations of finality.” *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, at ¶15, citing *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, 415-416. If courts could act at any time to determine that spousal support should have been paid, parties will have no sense of finality surrounding their support obligations.

{¶25} James also asserts that the trial court improperly acted sua sponte when issuing its ruling and that no motion regarding spousal support was pending before the court.

{¶26} However, the record reveals that various motions were filed by Suzanne prior to the hearing and these motions asserted that James had failed to pay the appropriate amount of spousal support and that the obligation to pay spousal support could not be automatically terminated upon James' retirement. The court did not rule on these motions prior to the April 2, 2010 Magistrate's Decision. Therefore, the court did not act sua sponte. However, as described above, the court improperly exercised its jurisdiction in this case.

{¶27} The first and third assignments of error are with merit.

{¶28} In his second assignment of error, James contends that because the Decree of Divorce stated that spousal support would terminate upon his retirement, the trial court did not have the authority to examine the parties' financial circumstances and to modify the decree. He further argues that the court ignored the plain language of the Decree and of paragraph e.

{¶29} In this case, the court interpreted the existing Decree of Divorce to determine that James' obligation to pay spousal support did not terminate upon his retirement and that he should have continued paying throughout the ten year period. During the hearing, the parties had opposite contentions as to what the Divorce Decree actually meant in "paragraph e," the paragraph including the language regarding James' obligation to pay support upon retirement.

{¶30} When a disagreement arises concerning the meaning of an agreement or an agreed judgment entry, it is well-established that "a trial court has broad discretion to interpret ambiguous or vague provisions" contained in the agreement. *Perko v. Perko*, 11th Dist. No. 2004-G-2561, 2005-Ohio-3777, at ¶19 (citations omitted); *Yaeger v. Yaeger*, 11th Dist. No. 2002-G-2453, 2004-Ohio-1959, at ¶27 (citations omitted). "An interpretative decision by the trial court cannot be disturbed upon appeal absent a showing of an abuse of discretion." *Pilch v. Pilch*, 11th Dist. No. 2005-T-0135, 2006-Ohio-5829, at ¶24 (citation omitted).

{¶31} "[A]n agreed judgment entry is subject to the same rules of construction as a contract, in which common, unambiguous words will be given their ordinary meaning, unless some other meaning is clearly suggested from the face or overall contents of the

agreement.” *Dvorak v. Petronzio*, 11th Dist. No. 2007-G-2752, 2007-Ohio-4957, at ¶18, citing *Phillips v. Phillips*, 11th Dist. No. 2006-A-0037, 2007-Ohio-3368, at ¶34.

{¶32} In this case, the Decree states that the parties did not proceed to trial in this matter but, instead, the “parties present[ed] agreed judgment in this cause.” The agreed terms were incorporated into the Judgment Entry/Decree of Divorce.

{¶33} James and Suzanne, via motion and during the hearing, asserted opposing views as to whether James was to continue paying spousal support upon his retirement. Paragraph e of the Divorce Decree states that James’ “obligation to pay spousal support to [Suzanne] would terminate upon [his] retirement from General Motors, due to the fact that the Court hereinafter will adjust the parties’ equitable interest in [James’] pension plan so as to equalize the retirement benefits of” James and Suzanne. According to the Decree, James was to pay support for ten years, subject to contingencies such as retirement. James interprets this to mean that he could discontinue paying support immediately upon retirement.

{¶34} The language of the Decree states that James’ obligation would terminate “upon his retirement.” “[W]hen a term in an agreement is unambiguous, then the words must be given their plain, ordinary and common meaning.” *Kistler v. Kistler*, 11th Dist. No. 2003-T-0060, 2004-Ohio-2309, at ¶14, citing *Forstner v. Forstner* (1990), 68 Ohio App.3d 367, 372. The word “upon” is a common word and is not ambiguous or vague. This language shows an intention for the obligation to end automatically, not at some later, undetermined time.

{¶35} Moreover, paragraph e, the retirement provision, is grouped in a list with other contingency provisions that would automatically terminate James’ obligation to

pay support. The Divorce Decree states that “[James’] obligations to [Suzanne] as pertains to spousal support shall terminate upon the following: a.) The Wife’s remarriage; b.) The Wife’s death; c.) The Husband’s death; d.) Ten years from the date of the final hearing [September 28, 1999].” All of these provisions appear to automatically terminate upon the occurrence of the specified event. This further supports James’ contention that support was to terminate upon his retirement.

{¶36} Based on the foregoing, the trial court erred when determining that James’ obligation to pay support did not cease automatically upon his retirement. Although the court may have determined that a modification should occur to the spousal support upon James’ retirement, the court did not act to make such a modification. The court’s failure to do so does not change that the Decree of Divorce’s language allows James’ obligation to pay spousal support to cease upon his retirement.

{¶37} The second assignment of error is with merit.

{¶38} For the foregoing reasons, the Judgment Entry of the Trumbull County Family Court, Domestic Relations Division, determining that James Laughner’s retirement did not automatically end his spousal support obligation and ordering him to pay Suzanne Laughner \$15,600 of past-due spousal support, is reversed. Costs to be taxed against appellee.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.