

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rebecca A. Symbolik

Court of Appeals No. L-09-1281

Appellant

Trial Court No. DR2000-0709

v.

Thomas A. Symbolik

DECISION AND JUDGMENT

Appellee

Decided: November 12, 2010

* * * * *

Fritz Byers and Sheldon Slaybod for appellant.

Richard A. Karcher, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} Plaintiff-appellant, Rebecca A. Symbolik, appeals a judgment entered by the Lucas County Court of Common Pleas, Domestic Relations Division, in a post-divorce case. In the subject judgment entry, the trial court interpreted and clarified terms of a settlement agreement addressing the issues of: (1) when spousal support should end;

and (2) when appellant should begin making payments to appellee from benefits that she receives from appellee's pension. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellant and defendant-appellee, Thomas A. Symbolik, were married on August 12, 1972. On May 18, 2000, appellant filed for divorce, and on June 23, 2000, appellee filed a cross complaint for divorce.

{¶ 3} On November 15, 2001, the parties reached a settlement of the disputed issues in the action and read into the record the basic elements of the agreements that were made. During the November 15 proceeding, counsel for appellant relevantly stated:

{¶ 4} "The alimony will continue, Your Honor, at \$600 per month until Mr. Symbolik is in pay status of his pension. Upon payment of the pension, the spousal support will terminate. It's my understanding based on the representation of the pension board that each party will receive \$1,400. Do you have that latest account?"

{¶ 5} "* * *

{¶ 6} "We agreed, Your Honor, that during his lifetime -- that you [appellant] were going to pay \$200 of that pension during his lifetime, and the reason we talked about that is to equalize the pensions for his pay -- that during his lifetime when he's in pay status, she pays \$200 per month. That would terminate upon his death."

{¶ 7} The terms of this agreement are further reflected in the trial court's May 7, 2002 judgment entry of divorce. The following two provisions of that judgment entry are relevant to the instant appeal.

{¶ 8} "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that as and for spousal support, the defendant shall pay to plaintiff the sum of Six Hundred Dollars (\$600) per month, plus 2% processing fee, until he retires from the United Parcel Service, Defendant's pension is in pay status, and Plaintiff starts receiving her share of that pension benefit. * * *"

{¶ 9} And, further,

{¶ 10} "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that * * * [t]he entire pension is to be divided equally between the parties, even though part of Defendant's pension is or may be non-marital, however, as and for property division, upon receipt of monthly benefits from the defendant's pension, plaintiff, Rebecca Symbolik, will pay to the defendant, Thomas Symbolik, the sum of Two Hundred Dollars (\$200.00) per month for the remainder of his life, terminating only upon the death of either party."

{¶ 11} Pursuant to the parties' qualified domestic relations order, appellant "may elect to commence her benefits under [appellee's pension plan] at any time on or after the date [appellee] attains the 'earliest retirement age' as such term is defined in the Plan and Section 414(p) of the Internal Revenue Code. Notwithstanding the above, the Alternate Payee shall commence her share of the benefits no later than the Participant's actual date of benefit commencement."

{¶ 12} On February 24, 2009, nearly seven years after the divorce became final, appellee filed a Civ.R. 60(B) motion for relief from judgment. In his motion, appellee

(who has not yet retired) stated that his Pension Board had recently acknowledged appellant's entitlement to a lifetime pension annuity, and that the annuity was deemed to be retroactive to December 2006. As a result of its decision, the Pension Board issued to appellant, in January 2009, a lump sum check in the amount of \$36,400 (representing 25 months of payments between December 2006 and January 2009 at \$1,400 per month).

{¶ 13} Appellee argued that because he had been paying spousal support to appellant during the identical period of time for which she had been awarded pension benefits, he was entitled, under the terms of the settlement agreement, to repayment of the overlapping spousal support amounts, plus an additional payment of \$200 per month for each of the months that appellant had been receiving pension benefits.

{¶ 14} Appellant opposed appellee's motion, both on grounds that appellee's motion was untimely filed and on grounds that she was entitled, under the terms of the settlement agreement, to receive simultaneous payments of both spousal support and pension benefits.

{¶ 15} The parties waived an evidentiary hearing on the matter, and on October 7, 2009, the trial court granted appellee's motion, and awarded judgment to appellee in the amount of \$25,400, representing "the total of (a) the 34 months of spousal support payments at \$600 each paid by Defendant to Plaintiff from December 1, 2006 through September 30, 2009, and (b) the 25 months of payments of \$200 each the Plaintiff should have paid the Defendant from her lump sum award of pension benefits for the period of December 1, 2006, through December 31, 2008." The court further ordered appellant to

pay appellee the total of any unpaid monthly installments of \$200 from January 1, 2009, to the date of the judgment entry and, further, to pay, beginning with the date of the judgment entry, monthly installments of \$200 to appellee until the death of either party, "all in accordance with the parties' Judgment entry of Divorce." The court further ordered that appellee's obligation to pay spousal support was terminated effective December 1, 2006.

{¶ 16} Appellant timely appealed the trial court's judgment entry, raising the following assignment of error:

{¶ 17} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY GRANTING HUSBAND'S MOTION FOR RELIEF FROM JUDGMENT."

{¶ 18} In her assignment of error, appellant makes the following arguments: (1) the motion was untimely; (2) the trial court lacked the authority to rewrite the consent judgment entry; (3) the trial court lacked jurisdiction to modify spousal support; and (4) the trial court's judgment was not equitable.

{¶ 19} Appellant argues that appellee's Civ.R. 60(B) motion was untimely under Civ.R. 60(B)(1), because in the event of "mistake, inadvertence, surprise or excusable neglect," the motion for relief from judgment must be filed "not more than one year after the judgment." However, under Civ.R. 60(B)(5), "a domestic court may relieve a party from a final judgment for 'any other reason justifying relief from the judgment.'"

McLemore v. McLemore, 2d Dist. No. 2000 CA 91, 2001-Ohio-1451; Civ.R. 60(B)(5).

{¶ 20} Also, although a trial court does not have continuing jurisdiction to modify or amend a marital property division incident to a divorce or dissolution decree, it does have the power to clarify and construe its original property division so as to effectuate its own judgment. *Yarder v. Sherer*, 6th Dist. No. L-03-1035, 2003-Ohio-6744, ¶ 13, citing *In re Dissolution of Marriage of Seders* (1987), 42 Ohio App.3d 155. "Pursuant to R.C. 3105.65, a domestic relations court may enforce a decree of dissolution and, 'where there is confusion over the interpretation to be given to a particular clause, the trial court in enforcing the agreement has the power to hear the matter, clarify the confusion, and resolve the dispute.'" *Id.*, citing *Seders*, *supra*, at 156-157.

{¶ 21} In the instant case, we find that the trial court did not, as appellant claims, "modify" the parties' agreement but, instead, clarified the terms addressing the point at which the spousal support obligation was intended to cease. Thus, the court merely exercised its continuing jurisdiction to interpret and enforce the provisions of its prior judgment.

{¶ 22} We now turn our attention to the trial court's clarification decision. In examining the court's decision, we are mindful that in this case, there was both an in-court recitation of the settlement agreement between the parties that was read into the record, and a separate, written, version of that agreement that was made part of the trial court's May 8, 2002 judgment entry.

{¶ 23} Ohio law is clear that an in-court agreement between the parties concerning the division of property, which agreement is adopted by the court as its judgment, is both

enforceable by the court and may be incorporated into the court's judgment entry even in the absence of an agreement in writing. *Orbek v. Orbek* (May 30, 1990), 9th Dist. No. 89CA004679, citing *Holland v. Holland* (1970), 25 Ohio App.2d 98, 101.

{¶ 24} Ohio law is likewise clear that when interpreting a divorce decree that incorporates the parties' written settlement agreement, the usual rules of contract interpretation generally apply in order to determine the meaning of any ambiguous language. See *Yarder*, supra, at ¶ 15. The principal goal in construing contract language is to effectuate the intent of the parties, which intent is presumed to reside in the language used in the written document. *Id.* Thus, 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 instrument. *Id.*

{¶ 25} In the instant case, we must construe the terms of the agreement, both as they were read into the record and as they were memorialized in the judgment entry, to determine whether they are ambiguous. See *Yarder*, supra. Where a disputed clause in an agreement is subject to more than one interpretation and, thus, is ambiguous, "the court has broad discretion in clarifying the ambiguous language by considering not only the intent of the parties but also the equities involved." *Weller v. Weller* (1996), 115 Ohio App.3d 173, 179, quoting *In re Avers v. O'Boyle* (Sept. 23, 1994), 6th Dist. No. 93OT061.

{¶ 26} Here, the parties disagree as to when spousal support should end. Appellant argues that spousal support should end, at some future date, when appellee

begins to receive his pension funds. Appellee, on the other hand, believes that spousal support should have ended already, back when appellant began to receive her pension funds. A common understanding between both parties is that spousal support was intended to end upon the occurrence of an event and on a date certain.

{¶ 27} Upon our review of the totality of disputed terms, we find that they were, in fact, ambiguous. Although the written agreement seems to specifically address only the narrow situation involving appellant's receipt of pension benefits and subsequent loss of spousal support that would occur upon appellee's retirement, review of the written agreement together with the oral statements contained in the transcript evidences a broader intent that spousal support should terminate upon appellant's receipt of her share of the pension funds, regardless of appellee's employment status. For example, the agreement that was read into the record expressly states, "Upon payment of the pension, the spousal support will terminate."

{¶ 28} Complicating our review of the agreement terms is the fact that the term "pay status," which was used in both the agreement that was read into the record and the judgment entry, was never defined. In this case, "pay status" could refer to either appellee's portion of the pension being paid or appellant receiving her portion of the pension. Without this definition, the question of which party must receive payment of the pension before spousal support terminates is left unclear.

{¶ 29} In clarifying the ambiguous language in favor of appellee, and determining that spousal support should have ended when appellant began to receive the pension

funds, the trial court did not abuse its discretion. We note that there is nothing stated in the agreement that was read into the record or in the judgment entry to suggest that appellant was entitled to double payments of both pension funds and spousal support. Instead, the agreement that was read into the record indicates only that there would be an increase in funds per month from \$600 in spousal support to \$1,400 in pension benefits that appellant would receive under the agreement. In addition, there is no mention in the agreement that was read into the record that appellee must be retired to terminate spousal support. We therefore find that the trial court's decision is both equitable and in conformity with the intent of the parties.

{¶ 30} For the foregoing reasons, appellant's sole assignment of error is found not well-taken, and the judgment from which this appeal is taken is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.