

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Marriage of

Donna J. RANDLE,
Petitioner-Respondent,
and

James K. RANDLE,
Respondent-Appellant.

Linn County Circuit Court
15DR10225; A163994

Carol R. Bispham, Judge.

Submitted December 1, 2017.

George W. Kelly filed the briefs for appellant.

Donna J. Randle filed the brief *pro se*.

Before Ortega, Presiding Judge, and Egan, Chief Judge,
and Powers, Judge.

POWERS, J.

Property division and spousal support award vacated
and remanded; otherwise affirmed.

POWERS, J.

In this dissolution case, husband appeals from a general judgment of dissolution of marriage, challenging the trial court's division of property and award of spousal support. The issue in this case centers on whether a stipulated settlement that was reduced to a separation judgment automatically expires or ceases to have any legal effect if the parties do not trigger a dissolution proceeding within 24 months or two years of entry of the separation judgment.

In a prior case, husband and wife negotiated a stipulated settlement that was later incorporated into a stipulated judgment of separation. Approximately four years later, wife filed a petition for dissolution and argued that, because the parties did not convert that separation judgment into a dissolution judgment within two years as described in ORS 107.465, the separation settlement had no effect on the court's dissolution determinations. Husband argued that the separation judgment, which explicitly provided that it was for an unlimited duration, was intended to be a complete and final distribution of the parties' property, that it never expired, and that no further spousal support was warranted. The trial court agreed with wife's argument and concluded that the stipulated separation judgment expired after 24 months. For the reasons explained below, we conclude that the trial court erred in concluding that the separation judgment had expired. Accordingly, we vacate and remand the property division and award of spousal support and otherwise affirm the dissolution judgment.

Neither party has requested *de novo* review, and we decline to exercise our discretion to conduct such review in this case. See ORS 19.415(3)(b) (describing discretionary *de novo* review); ORAP 5.40(8)(c) (explaining that we exercise *de novo* review "only in exceptional cases"). Accordingly, we are bound by the trial court's factual findings if they are supported by any evidence in the record, and we review the court's legal conclusions for errors of law. *Kirkpatrick and Kirkpatrick*, 248 Or App 539, 541 n 1, 273 P3d 361 (2012). We set out the facts below in a manner consistent with that standard.

In 2012, after seven years of marriage, husband filed a petition for dissolution of marriage. The parties, who were both represented by counsel, proceeded to a judicial settlement conference to negotiate a settlement. During the negotiations, the parties believed that wife had a terminal medical condition, that she would be unable to work or support herself, and that she would have to rely on social security benefits after the marriage was dissolved. The parties also believed that wife would have been eligible to draw on husband's social security benefits, which were far more significant than wife's benefits, if their marriage lasted for a minimum of ten years. As a result, instead of dissolving the marriage, the parties agreed to a separation settlement that, in addition to dividing their property, assets, and debts, provided for three years of spousal support payments to wife and further provided that the parties would wait three years before filing for dissolution as a way of ensuring wife's eligibility to draw on husband's benefits.

At the conclusion of the settlement conference, the parties placed the stipulated settlement on the record. The trial court accepted and approved of the settlement and thereafter entered a stipulated general judgment of separation that incorporated the parties' settlement agreement. Notably, the separation judgment was unlimited in duration. The separation judgment, however, did not explicitly address what effect it should have at any future dissolution proceeding.

In 2016, after the requisite three-year period had elapsed, wife filed a petition for dissolution. Wife acknowledged the prior separation judgment in her petition and sought to keep the property that she had been awarded. She also sought a redistribution of personal property and other marital assets as well as indefinite maintenance spousal support. Wife had learned that the parties were mistaken in their belief that wife would be eligible to draw on husband's social security benefits at the end of the three-year period. Although their marriage needed to last for a minimum of ten years, wife learned that she would not be eligible to draw on husband's benefits until he himself became eligible to draw on them, which was not until 2023.

At the time of the dissolution trial, wife was living in a mobile home, claimed \$1,278 in monthly expenses, and testified that she was receiving \$661 a month from her own social security benefits and that she received some financial assistance from family and friends. Husband, who was working for a nuclear medicine company where he had been employed since 1997, had a gross monthly income of approximately \$9,600. His monthly expenses, including payment of martial debt, were \$5,588. During the parties' marriage, they were deeply in debt, and husband assumed, and was still paying, many of those debts at the time of the dissolution trial.

After a bench trial, the trial court issued a detailed letter opinion that concluded, among other determinations, "that the separation agreement [had] expired 24 months after it was filed" and therefore that the court was not bound by the provisions in the prior separation judgment. Ultimately, the court did not redistribute the parties' personal property, but it did award wife a larger portion of husband's retirement account based on her not being awarded a portion of any other assets, her health, and her inability to be financially self-sufficient. The court also ordered husband to pay \$1,000 a month in indefinite maintenance spousal support. Husband took exception to portions of the court's letter opinion, which the court rejected, and the trial court then entered a general judgment of dissolution of marriage that incorporated its letter opinion.¹ Husband then filed this timely appeal.

On appeal, husband argues that the prior stipulated separation settlement never expired and that the trial court was statutorily required under ORS 107.104, which is discussed below, to enforce the terms of the agreement at dissolution. Wife defends the trial court's understanding of ORS 107.465 and its congruent conclusion that the separation judgment expired. Wife further argues that the trial

¹ Paragraph 12.0 of the dissolution judgment provides that the stipulated separation agreement "prohibited either party from filing for the automatic conversion to a dissolution within 2 years from entry of judgment, as provided by ORS 107.354 [*sic*]." Because that statute does not exist and given the context in which that scrivener's error appears, we presume that the trial court intended to cite ORS 107.465.

court's awards were just and proper in the circumstances of this case.

To determine whether the trial court correctly concluded that the separation settlement expired 24 months after the separation judgment was entered, we begin by examining ORS 107.465, which the trial court appeared to rely upon in making its determination. "In interpreting a statute, the court's task is to discern the intent of the legislature." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). To carry out that task, we turn to the analytical framework set out in *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009), by examining the text, context, and any pertinent legislative history to discern the legislature's intended meaning. ORS 107.465(1) provides, in part:

"Upon motion of a party for an order to show cause why a judgment of separation should not be converted to a judgment of dissolution and after service of notice to the other party at least 30 days before the scheduled hearing, the court may, within two years after the entry of a judgment of separation, convert a judgment of separation into a judgment of dissolution of the marriage."

The text of the statute provides parties with a mechanism to bypass ordinary dissolution proceedings and simply convert a judgment of separation into a judgment of dissolution if they take the necessary steps to do so within the first two years following the entry of a separation judgment. There is nothing in the text of the statute, however, that limits the durational effect of separation judgments. Indeed, when entering a separation judgment, the trial court "shall determine and fix in its judgment the duration of the separation," which can either be unlimited or for a set term. ORS 107.475.²

² ORS 107.475 provides:

"The court shall determine and fix in its judgment the duration of the separation. At the expiration of such time, the judgment shall have no further effect. However, no rights created or granted in the judgment which have vested shall be affected by its termination. Upon motion of a party and service upon the other party of notice in the manner provided by law for service of summons, the court may renew or extend the duration. When the judgment is for unlimited separation, a party may by motion alleging that the cause for separation no longer exists and after due service of notice upon the other party in the manner provided by law for service of summons, apply for an order modifying or vacating the judgment, subject to the provisions of ORS 107.135."

In this case, the judgment of separation explicitly provided that it was “unlimited” in duration, and there was nothing in the stipulated settlement that set an expiration date. Moreover, in its letter opinion, the trial court acknowledged that, at the time the stipulated settlement was entered into, neither party intended for it to expire two years after the judgment was entered. Nevertheless, the trial court determined, based on its apparent interpretation of ORS 107.465, that the parties’ failure to convert the judgment within two years necessitated a conclusion that the separation agreement had expired and no longer controlled the intent of the parties. As described above, however, that interpretation is contrary to the text and context of ORS 107.465 and ORS 107.475. Accordingly, we conclude that the trial court erred in determining that the separation settlement had expired.

Having determined that the separation settlement did not expire after two years, we turn to husband’s argument that the trial court was required to enforce the terms of the stipulated judgment of separation at dissolution. The Oregon legislature has expressed a strong policy preference in favor of the enforceability of settlement agreements in the context of dissolution and separation proceedings. *See* ORS 107.104. That strong policy preference, however, is not without limits. ORS 107.104(1)(b) specifically provides two exceptions to that general policy: courts should enforce the terms of settlements “except when to do so would violate the law or would clearly contravene public policy.” A separation judgment incorporating a stipulated separation agreement is enforceable as a contract and contractual remedies are available to enforce it. *See* ORS 107.104(2)(a) (providing that courts “may enforce the terms set forth in a stipulated judgment signed by the parties, a judgment resulting from a settlement on the record or a judgment incorporating a marital settlement agreement *** [a]s contract terms using contract remedies”). As we have previously explained in the context of a marital settlement agreement:

“A marital settlement agreement incorporated into a dissolution [or separation] judgment is interpreted in the same manner as other contractual provisions, that is, by examining the text within the context of the whole

document to determine the parties' intentions; examining extrinsic evidence of the parties' intentions if text and context are ambiguous; and, as a last resort, employing maxims of construction."

Patterson and Kanaga, 206 Or App 341, 348, 136 P3d 1177 (2006) (citations omitted). The same principle applies to a stipulated judgment signed by the parties or a judgment resulting from a settlement on the record. See ORS 107.104(2). When construing settlement agreements, courts must "pursue the intention of the parties, ORS 42.240, and, if possible, to construe the contract as a whole, giving effect to every word and phrase, ORS 42.230." *Patterson*, 206 Or App at 348.

In this case, because the trial court found that the separation agreement had expired, it did not specifically address what the parties intended the effect of the separation judgment to be on a later dissolution proceeding. That is, although the trial court made references in its letter opinion to the parties' intentions, it is not clear that the trial court followed the analytical framework set out in *Patterson* to determine those intentions. Accordingly, we vacate the property division and award of spousal support portions of the dissolution judgment and remand the case to the trial court so that it may determine in the first instance whether the parties intended the separation judgment to control the dissolution proceeding, especially in light of the parties' misunderstanding of the availability of social security benefits, and, if so, whether any of the exceptions in ORS 107.104 applied.

Thus, on remand, the trial court will first need to determine whether the parties intended for the separation judgment to control at a later dissolution. In construing that settlement agreement, the court is "required to pursue the intention of the parties, ORS 42.240, and, if possible, to construe the contract as a whole, giving effect to every word and phrase. ORS 42.230." *Patterson*, 206 Or App at 348. In determining whether an agreement is ambiguous, a court may look to "the circumstances under which [the agreement] was made, including the situation of the subject and of the parties," when construing the agreement to

determine what the parties intended. ORS 42.220; *see also Batzer Construction, Inc. v. Boyer*, 204 Or App 309, 315, 129 P3d 773 (2006). “A contract provision is ambiguous ‘if it has no definite significance or if it is capable of more than one sensible and reasonable interpretation.’” *Patterson*, 206 Or App at 349 (quoting *Deerfield Commodities v. Nero, Inc.*, 72 Or App 305, 317, 696 P2d 1096, *rev den*, 299 Or 314 (1985)). Next, if the trial court determines that the parties intended for the stipulated separation judgment to control the dissolution terms, the court will then need to decide whether giving effect to that intention would either violate the law or clearly contravene public policy.

Property division and spousal support award vacated and remanded; otherwise affirmed.