

FACTS

The parties married in November 1997 and separated in June 2007. They agreed the community portion of Ms. Aubuchon's retirement plan and Mr. Aubuchon's retirement plan and pension would be divided equally, each to receive "one-half of the value" of each other's plans "as of June 13, 2007, or as close to that date as may be practical" and be valued by accountant and attorney, Clay Randall. Clerk's Papers (CP) at 10. The decree directs the parties "shall divide the pensions listed in the Property Distribution . . . using Qualified Domestic Relations Orders (QDROs)." CP at 11.

On July 28, 2008, Mr. Randall valued the community portion of the retirement accounts, using a June 13, 2007 valuation date. He found Mr. Aubuchon should transfer \$80,466 to Ms. Aubuchon as an equalization payment. A month after Mr. Randall's recommendation, Ms. Aubuchon moved to compel Mr. Aubuchon to transfer the equalization payment. The court ordered Mr. Aubuchon to transfer the payment, but ordered a QDRO first be drafted.

The parties signed and filed a QDRO on October 7, 2008. The QDRO requires Mr. Aubuchon's plan administrator to, "pay and disburse to [Ms. Aubuchon] the sum of \$80,466 plus any appreciation or depreciation since July 28, 2008." CP at 62. Before

distribution, the stock market drastically declined. On November 1, 2008, the administrator transferred \$60,130.63 to Ms. Aubuchon representing the depreciated share allocated to her.

Ms. Aubuchon unsuccessfully moved to amend the QDRO to delete the “appreciation or depreciation” language. CP at 70. The superior court commissioner denied her request, finding the parties intended to divide the value of the retirement plans equally and it would be “patently unfair” for just Mr. Aubuchon to absorb the loss following the financial downturn. Report of Proceedings (Jan. 23, 2009) at 7. Ms. Aubuchon unsuccessfully requested revision by a trial judge, and then she appealed.

ANALYSIS

A. Equalization Payment

The issue is whether the trial court erred in denying Ms. Aubuchon’s motion to revise the commissioner’s denial of her request to amend the QDRO to delete the appreciation or depreciation language and fix values as of the separation date.

We review de novo a superior court’s decision denying a revision motion. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). And, we review de novo language in a dissolution decree and a QDRO. *Gimlett v. Gimlett*, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981). When an agreement is incorporated in a dissolution decree, the court must ascertain the parties’ intent at the time of the agreement. *Boisen v. Burgess*, 87 Wn. App. 912, 920, 943 P.2d 682 (1997). “Interpretation by the reviewing court must

be based upon the intent of the parties as reflected in the language of the agreement.” *Byrne v. Ackerlund*, 108 Wn.2d 445, 455, 739 P.2d 1138 (1987). “If a decree is clear and unambiguous, there is nothing for the court to interpret.” *In re Marriage of Bocanegra*, 58 Wn. App. 271, 275, 792 P.2d 1263 (1990). We look for the objective manifestations of the parties; the parties’ subjective intent is irrelevant. *City of Everett v. Sumstand’s Estate*, 95 Wn.2d 853, 855, 631 P.2d 366 (1981). We construe the decree and the QDRO as a whole, giving meaning and effect to each word, and interpreting words using their ordinary meaning. *Stokes v. Polley*, 145 Wn.2d 341, 346-47, 37 P.3d 1211 (2001).

Here, the decree shows the parties intended to divide their retirement plans equally. They agreed the value of the plans would be ascertained on June 13, 2007, or as close to that date as may be practical. They agreed to use a QDRO. In the QDRO, they agreed the valuation would include any “appreciation or depreciation since July 28, 2008.” CP at 62. Giving meaning and effect to each word, Mr. Aubuchon and Ms. Aubuchon intended to divide the community portion of their retirement plans equally. While they agreed to use their separation date as the valuation date, they permitted some leeway by stating that the division may be as close to that date as possible. The parties later reinforced their intent that the division be equal by directing Mr. Aubuchon’s plan administrator to value his plan and include any later appreciation or depreciation. Unfortunately for Ms. Aubuchon, the plan drastically depreciated due to

No. 27935-9-III
In re Marriage of Aubuchon

the sudden 2008 economic downturn.

Relying on *In re Marriage of Knutson*, 114 Wn. App. 866, 60 P.3d 681 (2003), Ms. Aubuchon contends her portion of the retirement account was not to be reduced by the fluctuated market value after June 13, 2007. In *Knutson*, the court held that a drop in market value prior to entry of a QDRO did not justify the trial court's modification of a decree that unambiguously awarded a sum certain amount from a 401(k) account. *Knutson* is distinguishable from this case because here no sum certain amount was listed in the decree. Rather the parties agreed to each receive an equal share. Further, the parties agreed to take into account market appreciation and depreciation.

In sum, the plan administrator was authorized to value and distribute Mr. Aubuchon's equalization payment, taking into account market losses after the date of separation pursuant to the QDRO language and the decree's language manifesting the parties' intent to divide their plans equally. Accordingly, the trial court did not err in denying Ms. Aubuchon's revision motion.

B. Modification or Clarification

The issue is whether the court acted outside its authority by refusing to amend the QDRO to delete the "appreciation or depreciation" clause. Ms. Aubuchon contends the trial court impermissibly modified the decree.

A decree is modified when a party's rights are either extended beyond the scope originally intended or reduced. *In re Marriage of Christel*, 101 Wn. App. 13, 22, 1 P.3d

No. 27935-9-III
In re Marriage of Aubuchon

600 (2000). In contrast, a clarification “is merely a definition of rights already given, spelling them out more completely if necessary.” *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999).

Here, the decree awards one-half (a percentage not a specific amount) of the community property portion of each retirement plan to each spouse. The QDRO distributes one-half interest, as valued by Mr. Randall. The parties agreed that Mr. Randall would consider any appreciation or depreciation. While the decree sets forth June 13, 2007 or close to it as the date of valuation, the court clarified the decree based on the parties’ intent and the express language of both the decree and QDRO. Accordingly, we conclude the trial court did not err in clarifying the decree.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, A.C.J.

WE CONCUR:

Sweeney, J.

No. 27935-9-III
In re Marriage of Aubuchon

Korsmo, J.