

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 21, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0120-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

SALLY ANN COLKER,

PETITIONER-RESPONDENT,

V.

JEROLD PETER COLKER,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM J. HAESE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Jerold Peter Colker (Jerold) appeals a circuit court order determining that Jerold was obligated under a Marital Settlement Agreement (the agreement) to pay his former wife, Sally Ann Colker (Sally), one-half of his

monthly pension stipend before taxes were deducted. Because we conclude that the trial court properly determined that the agreement provided that each party pay the other party one-half of the gross amount of the respective party's pension stipend, we affirm the circuit court's order.

The parties were divorced after a marriage of more than thirty years. The circuit court's judgment of divorce incorporated the agreement. The agreement denied both parties maintenance and awarded each party his or her respective pension plan or annuity. However, the Agreement also provided as follows: "In order to effectuate an equal division of assets, each party shall pay to the other an amount equal to one-half of the gross amount stated above. This payment shall be considered a division of property rather than a payment of spousal support." The judgment clearly stated that Jerold's gross pension was \$1922.00 per month and Sally's gross pension was \$290.

Because the parties did not enter into a qualified domestic relations order, the City of Milwaukee police pension administrator deducted income taxes and sent the balance of \$1,302 to Jerold. He, in turn, paid one-half of that net amount to Sally. Subsequently, Sally filed a motion with the circuit court requesting an order to show cause why Jerold should not be held in contempt for refusing to pay Sally one-half of his pension payment before the deduction of taxes. The circuit court concluded that the agreement was ambiguous and took testimony from the parties regarding their intentions when they entered into the agreement. At the conclusion of the hearing, the circuit court concluded that Sally was entitled to one-half of Jerold's monthly payment before deduction of taxes.

Jerold argues here that the trial court's decision was flawed because the circuit court did not allow sufficient testimony regarding the parties' intentions

regarding the whole of the agreement. Because we independently conclude that the agreement was not ambiguous and that it did clearly provide that each party pay the other one-half of the party's respective pension payment before taxes were deducted, we need not address the necessity or adequacy of the scope of the trial court's pursuit of evidence of the parties' intentions. *Cf. State v. Blalock*, 150 Wis.2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989) (cases should be decided on the narrowest possible ground).

A stipulation incorporated into a divorce judgment is in the nature of a contract. *See Kastelic v. Kastelic*, 119 Wis.2d 280, 287, 350 N.W.2d 714, 718 (Ct. App. 1984). It is well established that the construction of a written contract presents a question of law that the appellate court reviews *de novo*. *Ondrasek v. Tenneson*, 158 Wis.2d 690, 694, 462 N.W.2d 915, 917 (Ct. App. 1990).

Unlike the circuit court, we conclude that the terms of the contract are clear and unambiguous. We hold that the contract plainly intended that each party pay the other one-half of the gross amount of the party's pension payment before any taxes were deducted. Accordingly, we affirm the circuit court's order.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

