

Circuit Court for Howard County
Case No. C-13-FM-20-000104

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 595

September Term, 2023

JUDITH A. DIXON

v.

DUANE L. DIXON

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: April 3, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a divorce proceeding filed in the Circuit Court for Howard County by Judith A. Dixon, appellant (“Wife”), against Duane L. Dixon, appellee (“Husband”). Prior to trial, the parties reached a Consent Agreement regarding the disposition of certain assets. The circuit court incorporated, but did not merge, the Consent Agreement into the divorce judgment.

After the divorce judgment was entered, a dispute arose regarding the effective date of the payment of Wife’s share of Husband’s pension benefits pursuant to a Domestic Relations Order (“DRO”) entered by the court based on the terms of the Consent Agreement. Husband filed a motion for clarification of the Order, which the court granted, ordering that Husband’s pension benefits were payable to Wife beginning on October 4, 2022, the date of entry of the divorce judgment.

On appeal, Wife presents the following questions:

1. Did the parties enter into an agreement authorized under Family Law § 8-101(a) making [Wife’s] marital share of [Husband’s] pension retroactive to December 1, 2019?
2. Are the terms of the agreement plain and unambiguous?
3. Is the Baltimore City Fire and Police Employees’ Retirement Plan’s interpretation of the Consent Agreement and the Domestic Relations Order reasonable?

We answer “no” to question 2, and for the reasons set forth below, we shall vacate the judgment and remand for further proceedings. Accordingly, we need not address questions 1 and 3.

FACTUAL AND PROCEDURAL BACKGROUND

Wife filed a complaint for absolute divorce on January 21, 2020 and an amended complaint for absolute divorce on December 21, 2020. On August 29, 2022, the parties advised the court that they had agreed to a division of their assets, excluding the marital home, and had prepared a Consent Agreement. Both parties were represented by counsel. Counsel conducted *voir dire* of Wife and Husband on the record, and Husband and Wife each confirmed that the Consent Agreement accurately reflected the terms of their agreement.

With respect to Husband’s pension, the Consent Agreement provided:

Husband is a retired officer with the Baltimore City Police Department and his pension is in pay status. Wife shall be entitled to fifty percent (50%) of the marital share portion of Husband’s F&P Pension, **“if, as and when” pension payments are distributed to him.**

(Emphasis added.) The court entered the judgment of absolute divorce on October 4, 2022.

On January 11, 2023, the court entered a DRO signed by the parties, directing the payment to Wife of fifty percent of the marital property portion of Husband’s pension benefits “if, as and when such payments are made.”

On February 24, 2023, Abraham Schwartz, General Counsel to the Fire and Police Employees’ Retirement System (“F&P”), advised counsel to the parties that pursuant to paragraph 5 of the DRO, which provided that F&P would begin benefit payments to Wife “if, as and when [Husband] starts receiving [his] benefits[,]” that “F&P [was] obligated to pay [Wife] her marital share of [Husband’s] benefit retroactive to his December 1, 2019 retirement effective date.” Counsel for Husband responded to Mr. Schwartz’s letter,

objecting to his interpretation of paragraph 5 of the DRO as requiring retroactive payments to Wife as of the date of Husband’s retirement, rather than the date of the parties’ divorce on October 4, 2022. Mr. Schwartz responded and reiterated F&P’s position that the DRO required payment of Wife’s marital share of Husband’s pension benefit retroactive to his December 1, 2019 retirement date. Mr. Schwartz indicated that F&P would deduct Wife’s marital share of Husband’s payment retroactive to December 1, 2019, and hold those funds in escrow pending further clarification from the court. On April 11, 2023, Husband filed a motion to clarify the effective distribution date of Wife’s marital share of his pension under the DRO and Consent Agreement, arguing that the court lacked authority to order the distribution of retirement funds prior to the date of entry of the divorce judgment.

Wife filed an opposition to Husband’s motion to clarify the distribution date of her marital share of his pension benefits, arguing that the parties had agreed to the retroactive payment of Husband’s pension benefits to Wife as of Husband’s date of retirement on December 1, 2019, and that the Consent Agreement reflected that agreement. Wife further asserted that F&P’s interpretation of the DRO as providing for retroactive payment of Husband’s pension benefits to Wife as of December 1, 2019 was correct.

The court granted Husband’s motion without a hearing. The court ordered that “the Fire and Police Retirement System use the date of October 4, 2022 for the purpose of distributing to [Wife] her fifty percent interest in the marital share portion of Husband’s F&P retirement interests.”

This appeal followed.

DISCUSSION

Wife argues that the parties contracted for the retroactive payment of Husband’s retirement benefits to her beginning on the date he began receiving the benefits on December 1, 2019. She asserts that paragraph 7B of the Consent Agreement unambiguously reflects the parties’ agreement that Husband’s pension benefits were payable to her on an “if, as and when” basis, which, in this case, was the date of his retirement on December 1, 2019. She contends that the circuit court erred in ordering that the distribution of Wife’s fifty percent interest in the marital share of Husband’s pension benefits began on October 4, 2022.

Husband contends that the circuit court properly concluded that Wife’s marital share of Husband’s pension benefits became payable as of the date of the parties’ divorce because the court’s authority to transfer a portion of a retirement benefit arises at the time that the court grants a divorce. Husband asserts that, until the time of the divorce, there can be no marital estate in the retirement asset that is subject to distribution. He argues that the phrase “if, as and when” as used in paragraph 7B of the Consent Agreement unambiguously indicates prospective payment, and the parties did not intend for Husband’s pension benefits to be paid to Wife retroactively.

Section 8-202(a)(1) of the Family Law Article (“FL”) of the Maryland Code, (1984, 2019 Repl. Vol.) provides: “When the court grants an annulment or a limited or absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of personal property.” FL § 8-205 provides further that “[t]he court may transfer

ownership of an interest in . . . a pension” and “[t]he court shall determine . . . the terms of the transfer of the interest in [the] property[.]” FL § 8-205(a)(2), (b).

We see no basis in the statutory language supporting Husband’s contention that the trial court’s authority to transfer an interest in Husband’s pension was restricted to the transfer of prospective pension payments only. Husband’s pension was marital property, subject to distribution under FL § 8-205. Husband’s pension was in pay status at the time of the divorce, and the parties agreed that Wife was entitled to fifty percent of the marital share of Husband’s pension “if, as and when” the pension payments were distributed to him. The Consent Agreement did not, however, further define the parties’ agreement as to the exact date on which Wife was to begin receiving her share of Husband’s pension benefits, and for that reason, we look to the language of the Consent Agreement to attempt to determine the parties’ intended meaning of the phrase “if, as and when.”

“Consent judgments are ‘agreements entered into by the parties which must be endorsed by the court.’” *Dennis v. Fire & Police Emps.’ Ret. Sys.*, 390 Md. 639, 655 (2006) (quoting *Chernick v. Chernick*, 327 Md. 470, 478 (1992)). When “interpreting the parties’ agreement as embodied in a consent judgment, we have applied the ordinary principles of contract construction.” *Id.* at 656; *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 18 (2020) (explaining that settlement agreements are “enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts” (quotation marks and citations omitted)). Consent orders “are construed in the same manner as other written documents and contracts, and if the language of the order is clear and unambiguous, the court will give effect to its plain, ordinary, and

usual meaning, taking into account the context in which it is used.” *Taylor v. Mandel*, 402 Md. 109, 125 (2007) (citation omitted). A trial court’s decision interpreting the terms of a written contract, including whether the contract language is ambiguous, is a question of law that we review de novo. *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019); *Frederick Classical Charter Sch., Inc. v. Frederick Cnty. Bd. of Educ.*, 454 Md. 330, 414-15 (2017); *Grimes v. Gouldmann*, 232 Md. App. 230, 235 (2017); *Myers v. Kayhoe*, 391 Md. 188, 198 (2006).

A term is ambiguous “if ‘when read by a reasonably prudent person, it is susceptible of more than one meaning.’” *Taylor*, 402 Md. at 125 (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)). Contract language can be ambiguous in two ways: “1) it may be intrinsically unclear; or 2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain.” *Id.* at 125-26 (cleaned up). Depending on the context, a term that is otherwise unambiguous may become ambiguous in a different circumstance. *Id.* at 126. “If ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made.” *Id.*; *Cnty. Comm’rs of Charles Cnty. v. St. Charles Assocs. Ltd. P’ship*, 366 Md. 426, 445 (2001) (“If the contract is ambiguous, the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract.” (quotation marks and citation omitted)). Ultimately, “the cardinal rule of contract interpretation is to give effect to the parties’ intentions.” *Dumbarton Improvement Ass’n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (cleaned up).

Wife contends that the use of the phrase “if, as and when” Husband received benefits unambiguously referred to December 1, 2019, the date that Husband began receiving pension payments, prior to the divorce. Husband contends that the meaning of paragraph 7B can be ascertained when read in conjunction with other provisions of the Consent Agreement, specifically paragraph 3, which addressed the distribution of other retirement assets and provided Wife with credits for disbursements paid to Husband prior to the divorce. He asserts that the parties would have included the F&P pension in paragraph 3 had they intended Wife to receive credit for payments made prior to the divorce. According to Husband, the absence of any mention of the F&P pension from paragraph 3 shows that the parties intended that the F&P pension payments made prior to the divorce would remain the sole property of Husband.

In this case, the language of the Consent Agreement, when viewed as a whole, is ambiguous as to whether the parties intended for the payments to Wife to be paid as of December 1, 2019 or October 4, 2022. That ambiguity cannot be resolved on the record before us. The designation of payments to Wife “if, as and when” paid to Husband could be interpreted literally, as counsel for F&P interpreted it, to mean on the first date that Husband received payment — December 1, 2019. Alternatively, the fact that paragraph 3 addresses “stipulated credit calculations” for various debts and assets, including the F&P DROP payment, indicates that the parties contemplated credits for distributions made during the marriage and specifically excluded prior F&P pension payments because they did not contemplate the payment of those benefits until after the divorce. In either case, resolution of the ambiguity in paragraph 7B of the Consent Agreement and paragraph 5 of

the DRO require consideration of evidence regarding the parties' intent. *See Hearn v. Hearn*, 177 Md. App. 525, 545-56 (2007) (remanding case for evidentiary hearing on whether a provision in a consent order regarding the husband's federal pension benefits was the product of mutual mistake, and whether reformation of the consent order was required to conform with the parties' actual intentions); *Sy-Lene of Washington, Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 169 (2003) (remanding case for a hearing to determine the parties' intent regarding language in a commercial lease referencing a restriction on the number of employee parking spaces available).

Accordingly, we remand for an evidentiary hearing to determine the contractual intention of the parties regarding the date on which Wife was to begin receiving her marital share of Husband's F&P pension, with consideration of extrinsic evidence, as necessary.

**JUDGMENT VACATED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION.**

**COSTS TO BE PAID 50% BY
APPELLANT AND 50% BY APPELLEE.**