Circuit Court for Cecil County
Case No. C-07-CV-17-0078

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 790

September Term, 2019

WESLEY G. WARNICK

v.

DOREEN MARY URIE, ET AL.

Kehoe,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: November 30, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a hearing on a Complaint for Interpleader in the Circuit Court for Cecil County. The trial court, sitting as the finder of fact, found in favor of Barbel Bundels ("Bundels") and Doreen Urie ("Urie") and against Wesley Warnick ("Warnick") regarding Bundels' and Urie's entitlement to Warnick's pension under the Baltimore County's Deferred Retirement Option Program ("DROP Program" or "DROP"). Both Bundels and Urie are former spouses of Warnick, who, upon their respective divorces, were given entitlement to marital portions of Warnick's pension from the Baltimore County Police Department upon his retirement.

In the Bundels divorce, a Qualifying Domestic Relations Order ("QDRO") was issued at the time of the divorce. In the Urie divorce, a Judgment of Absolute Divorce was entered which referenced a forthcoming QDRO to be entered.[1] Due to the possible conflicting interests in Warnick's pension, the Baltimore County Employees Retirement System ("ERS") filed a "Complaint for Interpleader" against Warnick, Bundels, and Urie on February 3, 2017. On March 7, 2017, Urie filed an "Answer to Interpleader" and a "Counter-Claim for Specific Enforcement Order." On March 13, 2017, Warnick filed a "Cross-Complaint to Enforce the Entry of a QDRO and Other Relief and Complaint for Declaratory Judgment" and an "Answer to Complaint for Interpleader." On March 24, 2017, Bundels filed an "Answer to Complaint for Interpleader." Both Urie and Bundels contended they were entitled to a marital portion of the DROP if elected by Warnick.

[1] For the sake of clarity, this Court will refer to the QDRO in the Bundels case as "Bundels QDRO" and to the Judgment of Absolute Divorce in the Urie case as "Urie Judgment."

Additionally, Bundels claimed her monthly benefits should not be reduced by any QDRO entered in the Urie divorce. On May 6, 2019, a hearing was held which the trial court held *sub curia*.

On May 1, 2019, the trial court entered an Order finding that both Bundels and Urie were entitled to their marital portion of any DROP payment elected by Warnick. The trial court further found that Urie was entitled to a survivor benefit and that her election of such a benefit would not reduce Bundels' monthly payment. Warnick filed a Motion to Vacate the Order on May 8, 2019. Both Urie and Bundels filed oppositions to Warnick's Motion to Vacate the Order. On June 10, 2019, the trial court denied Warnick's Motion to Vacate. This appeal followed.

Appellant presents two issues on appeal which we have reordered and rephrased as follows:[2]

> 1. Whether the Circuit Court erred in failing to apply deference to the interpretation of the language in the Bundels QDRO and the Urie Judgment by the Baltimore County ERS.
>
> 2. Whether the Circuit Court erred in finding that both Bundels and Urie were entitled to a marital portion of any

[2] Appellant's questions presented are as follows:

> 1. Did the Circuit Court fail to apply the correct deference to the interpretation of the language by the Baltimore County Employee's Retirement System in the Bundels' QDRO and in Urie's Judgment of Divorce.
>
> 2. Did the Circuit Court fail to recognize that the language in the Bundels' QDRO and the Urie Judgment of Divorce is dissimilar to the precedents relied upon by the Appellees.

> DROP payment elected by Warnick based on the language in the Bundels QDRO and the Urie Judgment.

For the reasons stated herein, we affirm the judgment of the Circuit Court for Cecil County.

FACTS AND PROCECURAL HISTORY

Warnick began working as a police officer for the Baltimore County Police Department ("the Department") in 1984. Throughout his employment, Warnick contributed to his retirement and began accumulating a pension under the Baltimore County ERS. On May 6, 1999, Warnick divorced Bundels, his wife of approximately nine years. Warnick continued working for the Department. As part of the divorce, the Bundels QDRO was entered. The QDRO provided:

> The marital property portion shall be the fraction of the Husband's full monthly benefit, the numerator of which shall be the number of months of Participant's membership in the Plan during the parties' marriage, up to the date of divorce, which the parties stipulate is one hundred ten (110) months, and the denominator shall be the total number of months of Husband's participation in the Plan.

Later, Warnick married Urie, who he divorced after approximately nine years on August 13, 2009. In the Urie Judgment, the Order provided that Urie was entitled to a marital share of Warnick's pension. Specifically, the Urie Judgment provided:

> [Urie's] interest in [Warnick's] aforesaid retirement benefit is hereby defined as fifty percent (50%) of the "marital share" of the retirement benefit, the marital share being that fraction of the benefit whose numerator shall be the number of months of the parties' marriage during which benefits were accumulated, and whose denominator shall be the total number of months during which the benefits shall commence. [Urie] shall receive fifty percent (50%) of the aforesaid marital share of any

> payments made from the retirement benefits of [Warnick], if, as, when the payments are made.

Additionally, the Urie Judgment provided that Urie was entitled to elect a death and survivor benefit for which she would be responsible for the cost. Both the Bundels QDRO and the Urie Judgment were submitted to the Baltimore County ERS for entry and future enforcement.

On February 3, 2017, Baltimore County ERS filed a Complaint for Interpleader in the Circuit Court for Cecil County requesting that the trial court make a determination as to the payment of Warnick's pension funds upon his retirement. Specifically, Baltimore County ERS requested guidance as to the distribution of the benefits if Warnick were to elect to take a DROP payment and if Urie elected to participate in a survivorship benefit, as both would have an effect on the monthly benefit ultimately paid out to the parties.

On February 8, 2017, Warnick filed a Notice of Appeal in the Urie divorce case alleging that he did not agree to the inclusion of a survivorship benefit in the Urie Judgment.[3] On July 27, 2017, the Interpleader Action was stayed until there was a mandate from this Court in the Urie appeal. Once the stay was lifted, a hearing was held before Judge Sidney Campen, Jr. on March 6, 2019. During the hearing, Ms. Katherine Limpert, a retirement benefits administrator with Baltimore County ERS was called as a witness. Ms. Limpert provided her opinions on the interpretations of the language in both the

[3] This Court heard arguments on this appeal on February 9, 2018 and issued an opinion on June 5, 2018. *See Warnick v. Warnick*, No. 2484, Sept. Term 2016, (filed June 5, 2018).

Bundels QDRO and the Urie Judgment. Ms. Limpert indicated she thought that Bundels would not be entitled to any portion of the DROP, Urie would be entitled to such a portion of the DROP, and that Urie, not Bundels nor Warnick, would bear all costs of a survivorship benefit elected by Urie. During the hearing, Judge Campen stated he was inclined to rule in accordance with Ms. Limpert's recommendations.

Instead, on May 1, 2019, Judge Brenda A. Sexton entered an Order that differed from Ms. Limpert's recommendations. The Order provided that both Bundels and Urie were entitled to a proportional share of any DROP benefits elected by Warnick using the same fraction as used to calculate both of their shares as to Warnick's monthly benefits. Additionally, the Order provided that Urie would be responsible for all costs associated with any survivorship benefits and such election would not reduce either Bundels' or Warnick's monthly payment from the pension. Warnick filed a Notice of Appeal on July 2, 2019.

DISCUSSION

I. The trial court did not err in refusing to give deference to the Baltimore County Employees' Retirement System's interpretation of the language in the Bundels QDRO and the Urie Judgment.

It is well established that the expertise of an agency in its own field should be respected. *Emps.' Ret. Sys. of Baltimore Cnty. v. Bradford*, 227 Md. App. 75, 82 (2016) (citing *Salerian v. Md. State Bd. of Physicians*, 176 Md. App. 231, 246 (2007)). Even so, "agency decisions receive no special deference on questions of law, which we review de novo." *Id.* (citing *Talbot Cnty. v. Miles Point Prop., LLC*, 415 Md. 372, 384 (2010).

Warnick contends that Ms. Limpert's testimony regarding her interpretation of the language in the Bundels QDRO and Urie Judgment as to their inclusion of DROP benefits should be given great deference as Baltimore County ERS is an agency acting in its area of expertise.[4] We disagree. Warnick relies on *Bradford* to support this notion that Baltimore County ERS opinions and interpretations should be given deference. This Court in *Bradford* did not rule that ERS is an agency to which deference is afforded. *Id.* at 87. Rather, this Court explicitly held that the agency in that case was the Board of Appeals, *not* ERS. *See id.* ("Thus, that the Board 'explicitly gave no deference to [ERS] in its decision and order' is of no moment, and any 'deference' to be allotted in this case belongs to the Board, not to ERS. . . ."). This Court in *Bradford* went further to explain our ruling in *Comptroller of Treasury v. Blanton*, 390 Md. 528 (2006) as not providing deference to ERS.[5]

Here, Baltimore County ERS filed a Complaint for Interpleader as "a disinterested stakeholder who seeks to have the court determine which of" the parties is entitled to what

[4] Bundels argues that Warnick did not preserve this argument before the trial court. Nevertheless, we exercise our discretion to consider this issue pursuant to Md. Rule 8-131(a).

[5] In *Blanton*, taxpayers appealed their income tax assessment by filing a complaint with the Comptroller. *Blanton*, *supra*, 390 Md. at 531. The Comptroller's office held a hearing and affirmed the assessment and the taxpayers appealed again. *Id.* This decision was affirmed by the Maryland Tax Court, but the Tax Court's decision was later reversed by the Circuit Court for Baltimore County. *Id.* The Comptroller appealed this reversal and the Court of Appeals reversed the circuit court's decision. *Id.* In its ruling, the Court of Appeals afforded considerable deference to the Tax Court's decision. In contrast, such deference is not afforded to the testimony of an employee of ERS as opposed to a Board or an Administrative Agency.

portion of Warnick's pension. *Mitchell Props., Inc. v. Real Estate Title Co.*, 62 Md. App. 473, 485 (1985). Ms. Limpert's testimony, as an employee of ERS at the hearing, was not the result of an in-depth investigation or hearing such as those performed by agencies in the case law relied on by appellant. *See Bradford*, *supra* 227 Md. App at 86–88. As ERS is simply a disinterested stakeholder in this action who requested guidance from the trial court, it made no administrative findings to which the trial court was required to give deference. Accordingly, the trial judge did not err in refusing to give deference to Ms. Limpert's testimony as an opinion of an agency entitled to such deference.

II. The trial court did not err as a matter of law in its interpretation of the language of the Bundels QDRO and the Urie Judgment based on the plain language of the documents.

The Court of Appeals explained the history and significance of QDROs in *Rohrbeck v. Rohrbeck*, 318 Md. 28, 30–36 (1989). The Employee Retirement Income Security Act of 1974 ("ERISA") added pension anti-alienation provisions to the Internal Revenue Code and Title 29 of the United States Code. *Dennis v. Fire & Police Emps.' Ret. Sys.*, 390 Md. 639, 652 (2006). In response, Congress adopted provisions governing QDROs in the Retirement Equity Act of 1984 ("REA"). *Id.* Due to questions concerning the validity of state court judgments entering QDROs, Congress exempted QDROs from the anti-alienation provisions in the Internal Revenue Code and Title 29. *Id.* at 652–53. The *Rohrbeck* court, using this background information on QDROs, held that ordinary principles of contract interpretation should be applied to interpreting the language of QDROs. *Id.* at 655. "[U]nder Maryland law, the interpretation of a contract, including the

question of whether the language of a contract is ambiguous, is a question of law subject to *de novo* review." *Towson v. Conte*, 384 Md. 68, 78 (2004).

Under the ordinary principles of contract construction, we apply the objective theory of contracts. *Pulliam v. Pulliam*, 222 Md. App. 578, 587 (2015). Indeed, "the clear and unambiguous language of an agreement will not give way to what the parties thought the agreement meant or was intended to mean." *Id.* (quoting *Atl. Contracting & Material Co. v. Ulico Cas. Co.*, 380 Md. 285, 301 (2004)). To apply the objective theory of contracts, we look to the agreement itself and "determine what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985). If the language of the contract or agreement is unambiguous, "a court must presume that the parties meant what they expressed." *Id.* Under these circumstances, "the true test is not what the parties to the contract *intended it to mean*, but what a reasonable person in the position of the parties would have *thought it to mean*." *Id.* (emphasis added). A contract is not ambiguous simply "because the parties thereto cannot agree as to its proper interpretation." *Fultz v. Shaffer*, 111 Md. App. 278, 299 (1996).

A. The Bundels QDRO

Warnick contends that the language in the Bundels QDRO is ambiguous and that interpretation of such language would not entitle Bundels to a proportional share of any DROP payment. We disagree. The language in the Bundels QDRO provides that Bundels will receive a marital share (to be calculated based on a fraction proportionate to the length

of Bundels and Warnick's marriage) of Warnick's "full monthly benefit." Warnick argues that because the DROP would be a lump-sum payment, and not monthly, this language does not apply to the DROP. Warnick argues that because the DROP would be paid through a lump sum payment as opposed to a monthly payment, it would necessarily reduce the monthly benefit paid to him from his pension.

Although the language "full monthly benefit" is different from that of the language "any payments made from the pension" in *Dennis*, the underlying reasoning for including the DROP payment remains the same. *See Dennis*, *supra*, 390 Md. at 644, 651. If Warnick is to elect to take a lump-sum DROP payment upon his retirement, it will reduce the monthly benefit paid to him from his pension. Accordingly, this reduction would also reduce the payment to Bundels. The parties included the word "full" in the Bundels QDRO for a reason. If the payment is reduced, it cannot be considered "full." The Court of Appeals has held that QDROs or judgments do not need to reference the DROP program specifically for any payments from it to be subject to division. *Id.* at 651, 656. By providing for Bundels to receive a marital share of the "full monthly benefit," the Bundels QDRO entitled Bundels to receive a share of any DROP payment as well to prevent her payment from falling below "full." The language is unambiguous.

Warnick's other argument fails as a result of this conclusion. We hold that the language in the Bundels QDRO is unambiguous. Accordingly, we do not look to the parties' subjective intent. *Daniels*, *supra*, 303 Md. at 261. The objective theory of contracts "does not permit [] inquiry into the subjective intent of the parties in cases such

as this where the contract terms are clear." *Dennis, supra*, 390 Md. at 658. The fact that the DROP was not understood by the spouses at the time of the contracting as being part of the QDRO is irrelevant because the terms here are clear. *Id.* Accordingly, we find that the trial court did not err in finding that Bundels is entitled to a proportionate share of any DROP payment elected by Warnick.[6]

B. The Urie Judgment

Similar to the Bundels QDRO, Warnick contends that the language in the Urie Judgment does not entitle Urie to a share of a DROP payment because the language is ambiguous, and the parties did not intend for such a result. The language in the Urie Judgment provides that Urie is to receive a marital share of "any payments made from the retirement benefits of [Warnick]." Warnick argues that this language is not as broad as the language used in the relevant documents in past cases decided in Maryland regarding the entitlement to DROP payments. We disagree.

[6] Warnick also raises in passing his concern that during the hearing, the trial judge stated he was leaning one way in his ruling, but when the Order was filed, he ruled the opposite away. Warnick also contends that because the Order was signed by a different judge than the judge who heard the case, there may have been a misunderstanding. We disagree. The judge who presided over the hearing was a senior judge who resides in Talbot County, Maryland. Under these circumstances, having another judge in the same county that entertained the hearing sign the Order is neither uncommon nor inappropriate. Further, "[j]udges are presumed to know the law. Absent an indication to the contrary, we must assume judges apply the law correctly to the case before them." *Hebb v. State*, 31 Md. App. 493, 499 (1976). Just because a trial judge does not articulate his reasons for a certain finding, does not mean he applied the incorrect law or made a mistake. *Id.* Additionally, the fact that Warnick's Motion to Vacate the Order was denied further supports the notion that there was no misunderstanding or mistake in the ruling as contained in the Order.

The language in *Dennis* in the Judgment of Divorce provided that the ex-spouse was entitled to a marital share "of any payments made from the pension to the participant." *Dennis*, *supra*, 390 Md. at 644. There is almost no difference in the language used in *Dennis* and the language used in the Urie Judgment. The words "any payment made from the retirement benefit" are unambiguous and we interpret them as to apply to all payments made from the pension, including those from the DROP program. This logic was followed in both *Dennis* and *Pulliam* where the Court of Appeals and this Court held that the DROP program is part of the retirement benefit of a former employee and, as such, the ex-spouses were entitled to a share of that payment as well. *Id.* at 656–57; *Pulliam*, *supra*, 222 Md. App. at 588, 597.

Warnick's contention that the parties did not intend to include the DROP payment in their agreement fails for the same reason as this same argument does in the Bundels QDRO. Indeed, when the language of the agreement is unambiguous, the parties' subjective intent is irrelevant. *See supra* Section II.A; *Daniels*, *supra*, 303 Md. at 261. Were we to hold otherwise, Warnick would be allowed to manipulate the retirement benefits to the detriment of both Bundels and Urie. Accordingly, we hold that the trial court did not err as a matter of law in finding that Urie was entitled to a proportionate share of any DROP payment elected by Warnick.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.