Circuit Court for Baltimore County
Case No. C-03-FM-21-003524

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1237

September Term, 2023

JOANN KRAUSE

v.

JOSEPH L. KRAUSE, JR.

Ripken,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: April 9, 2025

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

JoAnn Krause ("Wife") and Joseph L. Krause, Jr. ("Husband") married in October of 1974. In July of 2022, they entered into a Marital Settlement Agreement ("the Agreement") which was incorporated but not merged with a Judgment of Absolute Divorce. The Agreement included a provision dividing the "pension" Husband receives from the Association of Maryland Pilots ("the Association"). Subsequent to the Agreement and entry of judgement, the parties learned that the payments Husband receives are not characterized as a pension payment by the Association and cannot be divided using the method specified by the terms of the Agreement. As such, Husband contended that Wife was no longer entitled to the agreed-upon share. As a result, Wife filed a motion to enforce the Agreement. The Circuit Court for Baltimore County considered the positions of each party and made two findings: (1) that the relevant provision of the Agreement was not enforceable as written, and (2) that the Agreement could not be reformed to reflect the parties' intent. Wife noted a timely appeal.

ISSUES PRESENTED FOR REVIEW

Wife presents two issues for our review, which we have rephrased:[1]

I. Whether the circuit court erred in holding that the Agreement was unenforceable.

II. Whether the circuit court erred in holding that the Agreement could not be reformed.

[1] Rephrased from:

1. Did the Circuit Court for Baltimore [County] err in concluding that the Marital Settlement Agreement could not be enforced with a Charging Order or non-Qualified Domestic Relations Order with[out] reforming the contract?
2. Did the Circuit Court for Baltimore County err in determining that the Marital Settlement Agreement of the parties could not be reformed?

For the reasons set forth below, we shall affirm the circuit court's holding that the Agreement was unenforceable. However, because the court based its finding regarding the parties' intent on a mischaracterization of the monies Husband receives from the Association as nonmarital property, we will vacate the holding that the Agreement could not be reformed to reflect the intention of the parties and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

i. The Marital Settlement Agreement

This dispute centers on the purported division of Husband's "pension" set forth in the Agreement. Paragraph 6A, under the section heading "PENSION," states,

> Husband is the owner of a pension plan under the Association of Maryland Pilots. Husband shall pay directly to Wife one-half of the monthly pension payment he receives from the Maryland Association of Pilots from July 1, 2022 . . . until such time as a Qualified Domestic Relations Order separates the Maryland Association of Pilots account into two accounts – one for each of the parties.

The paragraph also calls for the joint preparation of a Qualified Domestic Relations Order ("QDRO")[2] "dividing the Maryland Association of Pilot pension which is currently in pay out status." Paragraph 6B establishes the same equal division of Husband's 401(k) plan, also through the Association.

The circuit court entered a Judgment of Absolute Divorce in July of 2022, retaining jurisdiction to amend the judgment and any subsequent QDRO "for the purpose of

[2] "A Qualified Domestic Relations Order (QDRO) is the vehicle by which pension benefits are transferred from one party to another[.]" *Fischbach v. Fischbach*, 187 Md. App. 61, 94 (2009).

maintaining its/their qualifications as [QDRO(s)] under the Retirement Equity Act of 1984[.]" Two QDROs were prepared and served on the Association in October of 2022. The first addressed division of Husband's 401(k) plan. The second identified its subject as the "ASSOCIATION OF MARYLAND PILOTS & EMPLOYEES RETIREMENT PLAN." The QDRO[3] identified the latter "Plan" as marital property and directed the Association to pay 50% of Husband's "monthly pension benefit" directly to Wife.

Shortly thereafter, the Association informed the parties of an issue with the QDRO. The Association explained that the payments Husband receives, which both parties labeled pension payments, are instead statutorily mandated shares of pilotage fees collected by the Association and distributed to pilots in amounts dependent on their status as active or inactive and their years of service. Husband receives payments as an inactive pilot.[4] The Association further explained that, because it is statutorily required to make payments directly to inactive pilots, it could not create a separate account for Wife in accordance with the QDRO, as only Husband is an inactive pilot. The Association first suggested that Husband would have to continue making direct payments to Wife. Later, it suggested that the intent of the parties could instead be effectuated by signing a prepared "instruction letter," through which Husband would direct the Association to distribute half of his

[3] The order pertaining to the "pension" is entitled "Domestic Relations Order" but also states that "[t]his Order is a Qualified Domestic Relations Order[.]" For simplicity we refer to it as "the QDRO."

[4] "Pilot" here refers to a person who navigates ships into or out of harbor. *See* Md. Code (1989, 2018 Repl. Vol.), Bus. Occup. & Prof. § 11-101 ("BOP"). The Association is an organization of pilots and is governed by the State Board of Pilots, which licenses and regulates pilots who operate on Maryland's navigable waters. *See* BOP § 11-201.

monthly payments directly to Wife. Husband did not execute nor agree to sign the suggested "instruction letter."

ii. Enforcement proceedings in the circuit court

In November of 2022, Wife moved to revise the Judgment of Absolute Divorce and the QDRO to conform to the requirements of the Association. Husband moved to dismiss the motion, arguing that the time to revise the judgment per Maryland Rule 2-535(a) had lapsed, and that the circuit court's limited retention of jurisdiction did not encompass the relief Wife sought. Wife responded that her motion to revise the judgment should be considered as a motion to enforce the Agreement. Husband replied that a motion to enforce the Agreement was not properly before the court and that reformation of the Agreement would not be a proper remedy because the mutual mistake in identifying Husband's payments as a "pension" rendered the intent of the parties unclear.

A hearing was held in February of 2023. The court determined that a revisory motion was not the proper vehicle for Wife's remedy but allowed Wife to instead file a motion to enforce.

Wife filed a petition to enforce the Judgment of Absolute Divorce and the Agreement. Wife argued that though the parties misunderstood Husband's payments to be a pension, the parties' intent was to divide the payments in accordance with paragraph 6A of the Agreement. Wife attached, among other exhibits, copies of a direct deposit form Husband had received from the Association, checks Wife had received from Husband pursuant to his obligation to pay her directly, and the proposed "instruction letter" from the Association. Husband responded, arguing that the Agreement as written was unenforceable

and that reformation would not be a proper remedy. Husband also submitted an affidavit stating that he did not understand that the payments he received from the Association were not pension benefits, and that had he understood, he would not have agreed to pay Wife half of the payments.

Another hearing was held in May of 2023. Husband characterized division of the Association payments as alimony and argued that the parties' waiver of alimony, memorialized in paragraph 3 of the Agreement, precluded awarding Wife half of the payments. The court, taking up an argument from Wife's petition, inquired as to whether the parties had agreed to a waiver of alimony under the shared belief that the payments would be divisible by a QDRO. In response, Husband argued that an alimony award based on the payments might have been structured differently from an equal division of a variable source of income. Wife responded that the waiver of alimony should not be considered because the payments should not be construed as income from employment. Wife argued that the parties' intention was to divide in half Husband's retirement income, however characterized, and that the court should effectuate the parties' intent by directing Husband or a trustee to sign the "instruction letter."

The court issued a memorandum opinion in August of 2023. The court held that, because the plain language of the Agreement identified a "pension" which does not exist, paragraph 6A of the Agreement was unenforceable. The court also found that—although Wife had proved by clear and convincing evidence that there was a mutual mistake of fact as to the existence of a pension—the Agreement could not be reformed because the intent

of the parties was not clear.[5] Finally, the court held that reformation was precluded by the waiver of alimony.

DISCUSSION

Standard of Review

"When reviewing a ruling on a settlement agreement, we review the circuit court's factual findings for clear error and its legal conclusions *de novo*." *Pattison v. Pattison*, 262 Md. App. 504, 523 (2024) (internal citation and quotation marks omitted). "'If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.'" *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Yivo Inst. For Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)). When an order "'involves an interpretation and application of Maryland statutory [or] case law, [the appellate] [c]ourt must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019) (quoting *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004)). Interpretation of a contract is a question of law which we review de novo. *W.F. Gebhardt & Co., Inc. v. Am. Eur. Ins. Co.*, 250 Md. App. 652, 666 (2021) (quoting *Credible Behav. Health*, 466 Md. at 394).

[5] The memorandum opinion originally stated that "[t]he 'precise intent of the parties' *is* clear from the terms of the Marital Settlement Agreement." (emphasis added). Husband moved to revise this statement as a clerical error, and the court granted the motion. The corrected text of the opinion states, "'[t]he precise intent of the parties *is not* clear from the terms of the Marital Settlement Agreement[.]'" (emphasis added).

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THE AGREEMENT UNENFORCEABLE.

A. Party Contentions

Wife argues that the term "pension," as used in the Agreement, is a misnomer which the circuit court could have corrected through modification of the QDRO. Wife further argues that the circuit court's retention of jurisdiction enabled it to enter orders other than a QDRO to effectuate the intent of the Agreement.[6] Wife argues that the use of the terms "pension" and "QDRO" in the Agreement and judgment should not have prevented the circuit court from enforcing the Agreement through other means.

Husband argues that the Agreement could not be enforced because the Agreement was unambiguous and so the circuit court was bound by the plain language of the terms. Husband further argues that the use of the term "pension" was not a misnomer because the payments are of a character different from a pension. Husband argues that the court's jurisdiction was limited to modifying the existing QDRO for the purpose of effectuating the terms of the Agreement.

[6] Wife also argues that Maryland Rule 2-342, which establishes that parties may amend motions or other papers with leave of the court, should be construed to allow modification of the QDRO. In her motion to revise the judgment of absolute divorce and QDRO, Wife relies on Rule 2-535(b), which provides the court revisory power over a judgment in the case of fraud, mistake, or irregularity. *See* Md. Rule 2-535(b). Because Wife did not raise her rules-based argument below, it is not preserved for our review. *See* Md. Rule 8-131 ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

B. Analysis

"Settlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts." *Pattison*, 262 Md. App. at 523 (internal citations and quotation marks omitted). Maryland courts adhere to the objective theory of contract interpretation, "wherein '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.'" *Pulliam v. Pulliam*, 222 Md. App. 578, 587–88 (2015) (quoting *Atl. Contracting & Material Co. v. Ulico Cas. Co.*, 380 Md. 285, 301 (2004)).

When interpreting a contract, courts seek to effectuate the intent of the parties based on what a reasonable person would understand the contract to mean. *See Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 331–32, *cert. denied* 438 Md. 741 (2014). "First, a court must ascertain whether the agreement is ambiguous." *Id.* at 332. "Contractual language is considered ambiguous when the words in it are susceptible of more than one meaning to a reasonably prudent person." *Young v. Anne Arundel Cnty.*, 146 Md. App. 526, 587 (2002). "If [the court] finds that a contract is unambiguous, then it must only look to the language of the contract to determine the intent of the parties." *Sierra Club*, 216 Md. App. at 332.

Here, paragraph 6A of the Agreement repeatedly and consistently identifies the payments from the Association as a "pension." No other term for the payments is used. Where a specific term or figure is used in a contract, and cannot be construed to have multiple meanings, there is no ambiguity. *See Higgins v. Barnes*, 310 Md. 532, 537 (1987) (where a specific dollar amount could not be read to have two different meanings, but there

was still an error in the contract, "correction [was] accomplished through the equitable action of reformation, and not as an 'interpretation' of a provision that [was] unambiguous.") (internal citation omitted). This language is unambiguous, thus, the circuit court was bound to the terms of the Agreement and could not look elsewhere to determine the intent of the parties. *See Sierra Club*, 216 Md. App. at 332.

The circuit court found that "[b]y the terms of [the] Agreement the parties agreed to a division of Husband's pension with the Association of Maryland Pilots. No such pension plan exists." The circuit court was correct. Counsel for the Association, in an email to the parties, indicated that the payments Husband receives are not pension payments. Further, the statute providing for the payments does not contain the word "pension." Md. Code (1989, 2018 Repl. Vol.), Bus. Occup. & Prof. § 11-505 ("BOP"). Instead, the source of Husband's monthly payments is "pilotage fees" collected by the Association. *Id.* The language of the Agreement called for the division of a pension; a pension does not exist. Therefore, the court could not effectuate a division of Husband's payments through enforcement of the Agreement. *See Higgins*, 310 Md. at 537.

Wife argues that labeling the payments a "pension" was merely a misnomer subject to correction.[7] A misnomer is "[a] mistake in naming a person, place, or thing, esp. in a

[7] Wife also argues that the term "QDRO" is a misnomer and that the court could have entered another order applicable to the Association in order to effectuate division of payments between the parties. "QDRO" is not a generalized term. As described in *Fischbach v. Fischbach*, a QDRO is a "creature of federal employee benefits law" specific to retirement plans qualified under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001–1461. 187 Md. App. at 94–95 (quoting *Barnes v. Barnes*, 181 Md. App. 390, 424–25 (2008)). However, the question of what enforcement mechanism would be proper should the circuit court reform the Agreement on remand is not before us.

legal instrument." MISNOMER, Black's Law Dictionary (12th ed. 2024). The theory of misnomer applies to situations in which the incorrect name was used, but not to mistakes of type or character. *See Linz v. Montgomery Cnty.*, 256 Md. App. 73, 96–97 (2022). In *Linz*, the plaintiff sought to use the theory of misnomer to substitute a police officer as an individual defendant in place of the county after the statute of limitations on the officer had run. *Id.* at 82. This Court held that the county and the officer were neither factually nor legally one and the same, and therefore misnomer did not apply. *Id.* at 97. The same is true here. A "pension" is a retirement plan funded by obligatory wage deductions which then pays out set monthly allowances upon an employee's retirement. *See Lookingbill v. Lookingbill*, 301 Md. 283, 288–89 (1984). The payments Husband receives from the Association are funded by pilotage fees collected on behalf of active pilots and which vary month to month. *See* BOP § 11-505. The two are not interchangeable. Thus, the circuit court did not err in finding that it could not enforce the Agreement due to the use of the term "pension."[8]

Wife also argues that the circuit court was incorrect that its limited scope of jurisdiction did not allow it to grant the relief she sought. We do not agree. The circuit

[8] Wife also contends that correction of the purported misnomer "does not alter the intent of the parties" and argues that the mutual mistake of the parties should not be a barrier to enforcement. "Fraud, duress, or mutual mistake must be shown to justify a reformation, but are not involved in the question of the existence of an ambiguity in the contract." *Higgins*, 310 Md. at 538. In determining whether the Agreement is enforceable, the intent of the parties can only be ascertained through the unambiguous language of the contract, and parol evidence of a mutual mistake cannot be considered. *Id.* at 537–38. The circuit court did not err in restricting its enforceability analysis to the plain language of the Agreement only and in not looking to the mutual mistake.

court, in the judgment of absolute divorce, retained jurisdiction "to amend this Judgment and/or the aforesaid [QDRO(s)] for the purpose of maintaining its/their qualifications[.]" When a trial court retains jurisdiction in this manner, it "ha[s] the authority to amend the [order] to effectuate the intent of the parties and to assist with the enforcement of their settlement agreement." *Mills v. Mills*, 178 Md. App. 728, 743 (2008); *see also Eller v. Bolton*, 168 Md. App. 96, 116–18 (2006) (a court's retention of jurisdiction over a judgment of divorce allows it to effectuate the plain meaning of the settlement agreement). However, it is "not permitted to change the terms of an agreement reached by the parties." *Mills*, 178 Md. App. at 739. The circuit court had jurisdiction only to enforce the Agreement according to its plain meaning, which as we have discussed was not ambiguous. We agree with the circuit court that Paragraph 6A of the Agreement was unenforceable as written.

II. THE CIRCUIT COURT ERRED IN FINDING THAT THE AGREEMENT COULD NOT BE REFORMED.

A. Party Contentions

The parties agree that there was a mutual mistake of fact as to the existence of a pension. Wife argues that the circuit court erred in not reforming the Agreement because the parties' intent to divide the payments from the Association is clear. Wife also argues that it was error for the court to determine that the alimony waiver prohibited reformation because the payments are marital property, thus dividing them would not be a form of alimony.

Husband argues that the circuit court did not err because the intent of the parties is not clear due to misunderstanding the nature of Husband's payments. Husband argues that the waiver of alimony does apply to prohibit reformation. Husband construes the payments as a stream of future income and argues that, even if the payments were considered marital property, there is no provision in the Family Law article to transfer ownership in future income.

B. Analysis

Reformation is a remedy in contract available either where there has been a mutual mistake of fact or fraud, duress, or inequitable conduct. *Md. Port Admin. v. John W. Brawner Contracting Co., Inc.*, 303 Md. 44, 59 (1985). A mutual mistake of fact exists when it is "conclusively established that both parties understood the contract as it is alleged it ought to have been expressed, and as in fact it was, but for the mistake alleged in reducing it to writing." *Flester v. Ohio Cas. Ins. Co.*, 269 Md. 544, 556–57 (1973) (internal citation and quotation marks omitted). "'Not only must a mutual mistake be shown, but the precise agreement which the parties intended but failed to express must be proven beyond a reasonable doubt.'" *Id.* at 555–56 (quoting *White v. Shaffer*, 130 Md. 351 (1917) and citing *Second Nat'l Bank of Balt. v. Wrightson*, 63 Md. 81 (1885)). Reformation of a written instrument is an exception to the inadmissibility of parol evidence. *Higgins*, 310 Md. at 537.

i. Findings of the circuit court

The circuit court found by clear and convincing evidence that a mutual mistake of fact existed "as to the nature of Husband's money received by the Association[.]" Both

parties believed and reduced to writing that the payments Husband receives came from a pension, when in fact they are derived from his statutorily mandated share of pilotage fees. The court did not err in this finding. Representations from both parties demonstrated their mutual, mistaken belief that the source of payments was a pension, and the court likewise had available, and considered, the parties' jointly filed tax returns on which they reported the payments as pension income.

The circuit court next found that, despite the existence of a mutual mistake of fact which was reduced to writing in the agreement, "[t]he precise intent of the parties [was] not clear[.]" In so holding, the court did not fully explicate its reasoning, but referred to the mutual mistake of fact as "the existence of Husband's interest in a pension," and for the first time, "*Wife's marital property right to a divisible portion of that pension*." (emphasis added). The court further considered the parties' waiver of alimony and found that the waiver precluded reformation under Maryland Code (1984, 2018 Repl. Vol.) section 8-103 of the Family Law Article ("FL"). From these considerations, we find it clear that the circuit court based its finding regarding intent on the legal determination that the payments Husband receives from the Association must be construed as nonmarital property. This determination was incorrect for the reasons to follow.

ii. Retirement Benefits as Marital Property

The circuit court erred in its determination that because Husband's payments from the Association are not a "pension," Wife had no marital property right to a divisible portion of those payments. Marital property is defined as "the property, however titled, acquired by [one] or both parties during the marriage." FL § 8-201(e)(1). When making

determinations as to the marital character of property, courts construe "property" broadly. *See Potts v. Potts*, 142 Md. App. 448, 464 n.14 (2002) ("[A]ll types of property are considered 'marital property' under *Deering* and FL [section] 8-201(e)[.]").

"[P]ensions or retirement benefits that accrue during a marriage constitute marital property." *Abdullahi v. Zanini*, 241 Md. App. 372, 420 (2019) (internal citation and quotation marks omitted); *see also Long v. Long*, 129 Md. App 554, 573 (2000) ("When the right to receive retirement benefits is acquired during marriage, it is marital property subject to equitable distribution[.]"). The rule that retirement benefits are marital property applies to benefits of all kinds, "whether or not vested, matured, or contributory[.]" *Ohm v. Ohm*, 49 Md. App. 392, 399 (1981). The scope of this rule is further emphasized by a circuit court's broad power under FL section 8-205 to transfer ownership in, or grant a monetary award based on a valuation of, "a pension, retirement, profit sharing, or deferred compensation plan[.]" FL § 8-205; *see also Woodson v. Saldana*, 165 Md. App. 480, 489 (2005) ("[T]he court has broad discretion in evaluating pensions and retirement benefits, and in determining the manner in which those benefits are to be distributed.") (internal citation and quotation marks omitted). The equitable division of such benefits is distinguished from alimony; FL section 8-205(b)(10) directs courts, when making a monetary award based on the valuation of marital property, to consider as one factor "any award of alimony."[9]

[9] A court's ability to modify a separation agreement with respect to spousal support or alimony is limited by FL section 8-103(c) if the parties have expressly waived alimony and/or have stated that the provision is not subject to any court modification. A distribution or monetary award of marital property is distinct from alimony. Thus, the waiver of

The parties disagree as to whether the payments from the Association should be construed as marital property. To be sure, the benefits directed to inactive pilots under BOP section 11-505 are unusual, and Maryland courts have not yet construed them as marital or non-marital property.[10] Nevertheless, because of the broad definition of marital property and through an examination of the reasons courts construe retirement benefits as marital, we hold that BOP section 11-505 payments can properly be construed as marital property.

In *Deering v. Deering*, the Supreme Court of Maryland first addressed "the scope of a spouse's rights in civilian retirement benefits acquired by his or her marriage partner during the coverture period." 292 Md. 115, 117 (1981). In interpreting Maryland's then-new equitable distribution provision,[11] the Court undertook a comprehensive examination of the practices of states with comparable provisions and held that "there [was] no reason

alimony in Paragraph 3 of the Agreement would not extend to any provisions concerning marital property.

[10] The Supreme Court of Maryland, in examining an older version of the statute directing payments of pilotage fees to inactive or disabled pilots, distinguished those payments from payments made to active pilots through the Association. *Hull v. Comptroller of Treasury, Income Tax Div.*, 312 Md. 77, 91 (1988). The Court construed payments to active pilots as "a distribution of income," evidenced by the fact that it was taxed as such, but held that payments to inactive and disabled former pilots could not be taxed as income. *Id.* at 91–92. Thus, while no court in Maryland has yet examined whether payment of pilotage fees to inactive pilots is or is not marital property, such payments have been construed as retirement benefits distinct from taxable income.

[11] The Court examined Maryland Code (1974, 1980 Repl. Vol.) section 3-6A-01 of the Courts and Judicial Proceedings Article ("CJP"), which was recodified as FL section 8-201(e), and CJP section 3-6A-05, which was recodified as FL section 8-203. *See McGeehan v. McGeehan*, 455 Md. 268, 283 n.9 (2017); *Williams v. Williams*, 71 Md. App. 22, 28 (1987). FL section 8-201(e) defines marital property and FL section 8-203 empowers courts to determine which property is marital in the event of a dispute.

to exclude one form of deferred income asset from the marital estate while including others." *Id.* at 123–25. The Court noted that "[d]eferred compensation, stock options, profit-sharing and pensions are typical examples" of such assets. *Id.* (internal citation omitted). The Court noted that a minority of states make distinctions of kind when determining whether a retirement benefit is a marital asset. *Id.* at 125–26. The Court rejected this view and instead embraced the rule construing any type of retirement benefit as marital property. *Id.* at 128. In so doing, the Court found that a broad definition of marital property accords with the scope of property embraced by the statute and with the "wide variety of retirement plans available to both private and public employees"—"some flowing from the contract establishing the plan, others from statute." *Id.* at 125, 128.

In *Lookingbill v. Lookingbill*, the Supreme Court reexamined its holding in *Deering* and extended its rule to embrace disability benefits accrued during the marriage as marital property. 301 Md. 283, 286, 289–90 (1984). The Court found that, like the pensions examined in *Deering*, the husband's disability benefits in *Lookingbill* were a property right acquired during the marriage. *Id.* at 288. The Court noted that also as in *Deering*, the husband had made "contributions" to the disability benefits plan through obligatory deductions from his wages. *Id.*; *see also Deering*, 292 Md. at 118–19. The Court rejected the notion that any contingencies as to the maturing of a property right in disability benefits "[do] not degrade that right to an expectancy; the law has long recognized that a contingent future interest is property." *Lookingbill*, 301 Md. at 289. Thus, the Court continued to embrace a broad construction of "marital property."

iii. Pilotage fee payments

Husband's payments from the Association are not a "pension" and do not share all the same features as a pension; nevertheless, they share key features of the retirement and disability benefits construed to be martial property in *Deering* and *Lookingbill*. Under BOP section 11-502 and section 11-503, the Association acts as a collection agent for the pilotage fees owed to active pilots for their services. The fees are then distributed in accordance with BOP section 11-505: first, the association makes an accounting to the Board of Maryland Pilots of those eligible for payments as inactive pilots and makes the distribution; then, the remainder of the fees collected are used for the Association's expenses and paid to the active licensed pilots. Thus, similar to obligatory wage deductions, active pilots are obligated to receive a lesser portion of the fees produced by their labor. In exchange, the pilot can later receive distributions if the requirements are met under BOP section 11-504(a),[12] BOP section 11-504(b),[13] or BOP section 11-504(e).[14]

In *Lookingbill*, the Court noted that "[p]ension payments are actually partial consideration for past employment whether the maturity of the pension is contingent upon age and service or upon disability. Thus, a disability, like a service plan, is property and . . .

[12] A pilot who has been a member in good standing of the Association for twenty-five years and chooses to be placed on the list of inactive pilots, or who is incapable of working due to disability, can be eligible to receive distributions.

[13] A pilot who has been a member in good standing for twenty years and chooses to be placed on the list of inactive pilots can be eligible to receive distributions.

[14] A pilot who held an unlimited docking master license on October 1, 2000, has been a member in good standing for five years, and chooses to be placed on the list of inactive pilots, can be eligible to receive distributions.

constitutes marital property subject to equitable distribution." 301 Md. at 289. The payments of pilotage fees distributed according to BOP section 11-505 are the same. While active, pilots earn fees which they do not fully receive; later, contingent on either years of service or disability, they receive a portion of the fees being earned by active pilots. The payments to inactive pilots are thus in consideration for their past employment. These payments, if the pilot's rights to them accrue during a marriage, can be construed as marital property in accordance with *Deering* and *Lookingbill*.

iv. Considerations on Remand

The circuit court's finding, that the intent of the parties in forming the Agreement was not clear, is premised on an error of law: the conclusion that the Association payments were not and could not be marital property. Thus, the circuit court erred in holding that the Agreement could not be reformed. *See Pattison*, 262 Md. App. at 523 ("[W]e review the circuit court's factual findings for clear error and its legal conclusions *de novo*." (internal citation and quotation marks omitted)). We thus vacate the holding that the Agreement could not be reformed and remand for further proceedings. Because we agree with the circuit court that a mutual mistake of fact existed, the court need only revisit the element of the parties' intended agreement. *See Flester*, 269 Md. at 555–56 (before a contract can be reformed, the court must determine whether there was a mutual mistake of fact and "the precise agreement which the parties intended." (internal citations and quotation marks omitted)).

Understanding Husband's payments from the Association to be marital property, the circuit court should seek to determine whether the parties intended to equally divide

that property. In seeking to determine the agreement intended by the parties, the circuit court may look not only to the Agreement as a whole, but also to parol evidence. *See Higgins*, 310 Md. at 538–39. Here, that includes the conduct of the parties prior to and after learning of the mistake of fact; factors which might have precipitated such an agreement, including the duration of the marriage and any contributions, monetary or otherwise, by Wife in supporting Husband's career as a pilot; the parties' own representations to the court; any waiver of alimony; and other evidence the court deems relevant. Because the Agreement should be construed as a whole, the waiver of alimony appears to be relevant to determining intent of the parties as to the division of the pilotage fees; however, as noted above, the waiver of alimony should not be construed to preclude reformation. *See supra*, n.9.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.