UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2239

September Term, 2014

MICHELE J. GECKLE

v.

DAVID FOLDERAUER, SR.

Woodward,
Kehoe,
Leahy,

JJ.

Opinion by Woodward, J.

Filed: March 31, 2017

On December 9, 2014, the Circuit Court for Carroll County entered a Memorandum Opinion and Order interpreting the Marital Settlement Agreement ("MSA") between David Folderauer, appellee, and Michele Geckle,[1] appellant, to require that upon Folderauer's retirement, he select one of the retirement allowance options available under his Baltimore County Retirement Plan and name Geckle as the designated beneficiary. In this timely appeal, Geckle presents two questions for our review, which we have rephrased as follows:[2]

1. Did the trial court err in interpreting the MSA to allow Folderauer to select Geckle's survivor benefit?

2. Did the trial court err in ordering Folderauer to select the survivor benefit option for Geckle at the time of his retirement?

For the reasons that follow, we shall vacate the judgment of the circuit court and remand the case for further proceedings.

BACKGROUND

Folderauer and Geckle were married on December 31, 1998, and two children were born during their marriage. On or about April 8, 2007, the parties separated and began

[1] Michele Geckle has also been known as Michele Folderauer and Michele Knell.

[2] Geckle's issues presented in her brief are as follows:

> 1. Whether The Trial Court Erred by Authorizing Appellee to Select Which Survivor Benefits Option Appellant Would Receive from His Pension.
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> 2. Whether the Court Erred by Ordering Appellant [sic] to Select Appellee's [sic] Survivor Benefit Option at the Time of His Retirement.

living separate and apart with the purpose and intent of ending their marriage.

On January 30, 2009, the parties executed the MSA, which stated, in relevant part:

> **It is the mutual desire of the parties** in this Agreement to formalize their voluntary separation and **to settle all questions of** maintenance and support, alimony, counsel fees, **their respective rights in the property or estate of the other**, and in property owned by them jointly or as tenants by the entireties, **and in martial property, and in all matters of every kind and character arising from their marital relationship.**
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> * * *
>
> The parties mutually agree that in entering into this Agreement, each party signs this agreement freely and voluntarily for the purpose and **with the intent of fully settling and determining all of their respective rights and obligations growing out of or incident to their marriage.**

(Emphasis added).

Pertinent to this appeal is the following provision of the MSA, which outlines Geckle's rights in Folderauer's retirement plans:

> Husband [Folderauer] is a participant in Baltimore County Retirement System ("Pension") and a 457(b) plan. Wife [Geckle] waives her interest in Husband's Baltimore County Retirement Plan ("Pension") **except Husband shall assign to Wife the survivor benefits of the Baltimore County Retirement Plan ("Pension"), the costs of which shall be solely born by Husband.** Husband shall assign to Wife all his interest in the 457(b) plan and shall name Wife as beneficiary until the plan is transferred in her name.
>
> Wife's interests shall be transferred by an Order which meets the requirements of a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended, and the Retirement Equity Act of 1984, Pub. L. No. 98-397. Each party shall execute such documents and perform such acts as may be necessary to effectuate the purposes of this Paragraph, including, but not limited to, the execution of such documents and performances of such acts as may be required to have the terms of

> this Paragraph incorporated in a QDRO, as that term is defined in the Internal Revenue Code.
>
> The parties agree that the proposed QDRO shall contain a statement that jurisdiction over the parties and the subject matter is expressly reserved for the limited purpose of amending the Judgment to cause it to meet the definition of a QDRO, in the event the Judgment is determined by the Plan Administrator or a court of competent jurisdiction not to meet that definition.[3]

(Emphasis added). On February 2, 2009, the court entered a judgment of absolute divorce and incorporated, but did not merge, the MSA.

Prior to submitting any QDROs concerning survivor benefits to the trial court, Geckle sent a proposed QDRO to the Baltimore County Government. Kimberly Vazquez, Benefit Specialist, reviewed the proposed QDRO, which required the survivor benefit "be paid for the life of" Geckle, and preliminarily approved it. Vazquez also stated that "[u]pon [r]etirement, [ ] Folderauer must elect one of the survivor benefit options naming [Geckle] as the surviving beneficiary."

On April 17, 2014, Geckle filed a line, requesting that the trial court enter a QDRO, which, however, differed from the QDRO approved by the Baltimore County Government. The new QDRO added a provision that, if Folderauer died before retiring, Geckle would be "entitled to any lump sum payments made from [Folderauer's] retirement account." Prior to receiving a response from Folderauer, the court approved and entered Geckle's proposed QDRO on April 29, 2014. On or about the same day, Folderauer filed a Motion for an Extension of Time to file a response to the QDRO. Realizing that the QDRO was

[3] This provision of the MSA also provides that Folderauer waived any right that he may have "to participate as a payee or beneficiary of any" retirement plan "belonging to" Geckle.

entered prematurely, the court granted Folderauer's motion and treated it as a "Motion to Revise."

On May 5, 2014, Folderauer filed a response, which, *inter alia*, asked the trial court to vacate and modify the QDRO, as well as requested a hearing. Folderauer informed the court that as an employee of the Baltimore County Police Department, he "is a participant of Plan A of the Baltimore County Retirement System[,]" which is set forth in Article 5, Title 1 of the Baltimore County Code ("BCC"). Section 5-1-231(a) provides for seven optional allowances pertaining to post-retirement benefits payable upon the death of a retired member as follows:

> (a) **In lieu of the disability or service allowances payable under the provisions of this subtitle, any member may, prior to the first retirement allowance payment normally due, elect a retirement allowance of equivalent actuarial value in one (1) of the optional forms set out below.** The election of the option shall be made on a form provided for that purpose and shall be filed with the Board of Trustees. The options provide either a lump sum payment or continued payments to a beneficiary nominated by written designation duly acknowledged and filed with the Board of Trustees. Should a member die prior to the expiration of thirty (30) days after the date of filing such election or prior to thirty (30) days after retirement, the Board of Trustees shall determine whether or not such election shall be void and of no effect, and the benefits payable on the member's account shall be the same as though the member's election had not been filed and the member had died in active service. A member who has elected an optional benefit may not change such election after the first payment of the member's allowance becomes normally due, except as provided below.
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> (1) *Option 1*. If the retired member dies before receiving in annuity payments the present value of the annuity as it was at the time of retirement, the balance shall be paid to the designated beneficiary or the retired member's estate.

(2) *Option 2*. Upon the death of the retired member, one hundred (100) percent of the reduced retirement allowance shall be continued throughout the life of and paid to the designated beneficiary.

(3) *Option 3*. Upon the death of the retired member, fifty (50) percent of the reduced retirement allowance shall be continued throughout the life of and paid to the designated beneficiary.

(4) *Option 4*. Some other benefit or benefits shall be paid either to the retired member or a designated beneficiary, provided such other benefit, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to the retired member's retirement allowance and shall be approved by the Board of Trustees.

(5) *Option 5*. Upon the death of the retired member, one hundred (100) percent of the reduced retirement allowance shall be continued throughout the life of and paid to the designated beneficiary, with the further provision that should the retired member become divorced from the designated beneficiary or should the designated beneficiary predecease the retired member, upon notice to the Board of Trustees, the retired member's reduced retirement allowance shall thereafter increase to the amount that would be payable had no option been chosen.

(6) *Option 6*. Upon the death of the retired member, fifty (50) percent of the reduced retirement allowance shall be continued throughout the life of and paid to the designated beneficiary, with the further provision that should the retired member become divorced from the designated beneficiary or should the designated beneficiary predecease the retired member, upon notice to the Board of Trustees, the retired member's reduced retirement allowance shall thereafter increase to the amount that would be payable had no option been chosen.

(7) *Option 7*. Subject to subsection (d) of this section, an employee who has completed at least twenty-five (25) years of actual service as a sworn Baltimore County police officer, at least twenty-five (25) years of actual service as a sworn Baltimore County firefighter, or any combination of actual service as a sworn Baltimore County police officer and Baltimore County firefighter equaling twenty-five (25) years of actual service may retire with the

> option of having fifty (50) percent of the retired member's retirement allowance continued throughout the life of and paid to the original beneficiary upon the retired member's death. This option shall be provided at no cost to the employee.

(Emphasis added).

Folderauer argued to the trial court that the MSA was silent as to what type of survivor benefit Geckle would receive and who was to choose the survivor benefit. Folderauer asserted that he should be allowed to choose the survivor benefit, and if he were to choose the survivor benefit, he would choose Option 1.

Geckle responded on May 22, 2014, by filing a motion to amend the QDRO entered by the trial court. The amendment would have deleted the clause concerning the lump sum payment on Folderauer's death before retirement, but still would require Folderauer to, upon retirement, select a survivor benefit for Geckle "to be paid for [her] life[,]" which the QDRO designated as a "survivor annuity." Geckle also filed a response to Folderauer's objections to the QDRO, arguing that under the MSA she had the right to choose the survivor benefit that she would receive from Folderauer's retirement plan.

On August 28, 2014, the circuit court held a hearing on the QDRO. During the hearing, no evidence was adduced or proffered by either party. Only a copy of the Baltimore County Code was submitted to the court. In other words, if the court were to determine that the MSA was ambiguous, no extrinsic evidence was introduced or proffered to guide the trial court concerning the intent of the parties. Counsel for the parties agreed that Options 4 and 7 were not available for survivor benefits selection, because those

options would not be consistent with the MSA.[4] Folderauer's counsel stated that Folderauer would select Option 1, which would provide Geckle with a lump sum payment of the balance of "the present value of the annuity" due to Folderauer if Folderauer "dies before receiving such present value in annuity payments." BCC § 5-1-231(a)(1). Geckle's counsel stated that Geckle would choose Option 2, which would provide Geckle with "one hundred (100) percent of [Folderauer's] reduced retirement allowance" for the rest of her life. BCC § 5-1-231(a)(2).

On December 9, 2014, the trial court entered a Memorandum Opinion and Order. In its opinion, the court determined that,

> [b]ecause the letter from the benefits specialist states that [Folderauer], upon retirement, must select an option in order for [Geckle] to be able to receive survivor benefits, and because the [MSA] states that [Geckle] is the beneficiary of those benefits, the parties necessarily intended that [Folderauer] make an election when he retires.

The court also rejected Geckle's argument that, "because the [MSA] states that the survivor benefits *belong to her*, she has the right to choose which option [Folderauer] can elect." (Emphasis in original). The court reasoned that "the [MSA], requiring [Folderauer] to assign the survivor benefits to [Geckle], does not constitute a transfer of property, and therefore, [Geckle] cannot be the owner of the survivor benefits." (Footnote omitted). The court concluded that, "[a]s long as [Folderauer] names [Geckle] as a beneficiary of his

[4] Folderauer's counsel noted that Option 7 was not available because the designated beneficiary under this option would be the retired member's current spouse. *See* BCC § 5-1-231(d)(2)(v).

retirement plan, he has complied with the [MSA]."[5] In its order, the court vacated the April 29, 2014 QDRO and "[o]rdered, that [Folderauer], upon retirement, shall select an option that will assign [Geckle] survivor benefits of his [retirement plan]." (Bold emphasis omitted). Geckle noted this timely appeal.

STANDARD OF REVIEW

We interpret settlement agreements in accordance with the principles of contract law, and whether a contract is ambiguous is reviewed *de novo*. *See, e.g.*, *Fultz v. Shaffer*, 111 Md. App. 278, 298 (1996). Writing for this Court, our panel member, Judge Andrea Leahy, has expounded:

> [W]e apply 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." *Atl. Contracting & Material Co. v. Ulico Cas. Co.*, 380 Md. 285, 301, 844 A.2d 460 (2004) (citations omitted). In applying the objective theory:
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> > A court . . . must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant 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 meant.
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> *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261, 492 A.2d 1306 (1985). A "contract is ambiguous if it is subject to more

[5] In addition, the court ruled that, although "[a] beneficiary of a QDRO survivor annuity *may* be the recipient of an annuity for the remainder of his or her life[,]" the MSA "did not state that [Geckle] is entitled to receive survivor benefits for life," and thus Geckle "does not have that right." (Emphasis in original) (footnote omitted).

> than one interpretation when read by a reasonably prudent person." *Sy–Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167, 829 A.2d 540 (2003). But it is not ambiguous "merely because the parties thereto cannot agree as to its proper interpretation." *Fultz v. Shaffer*, 111 Md. App. 278, 299, 681 A.2d 568 (1996).

Pulliam v. Pulliam, 222 Md. App. 578, 587-88 (2015). We are cognizant throughout our review that "[c]ontract provisions must be viewed in the context of the entire contract rather than construing each term separately." *Azat v. Farruggio*, 162 Md. App. 539, 550 (2005) (internal quotation marks and citation omitted).

DISCUSSION

I.

Both parties contend that the MSA is unambiguous. Geckle asserts that Folderauer assigned "the survivor benefits" of his retirement plan to her in the MSA, which includes "the right to select [ ] the [retirement allowance] option [ ] [that] she w[ould] receive." On the other hand, Folderauer claims that, when the MSA and the BCC are read together, it is clear that he has the right to select the retirement allowance option for Geckle. Specifically, Folderauer asserts that BCC § 5-1-231(a) requires that the member elect the retirement allowance option, that this requirement is non-assignable, and that he, not Geckle, is the member of the retirement plan. Folderauer also argues that the language of the MSA directing him to "assign" to Geckle the survivor benefits means only that he was to designate Geckle as a beneficiary of his retirement plan.

From our review of the record, we must conclude, contrary to the position of both parties, that the MSA is ambiguous. First, there is no definition under the MSA of the term

"survivor benefits." Under Folderauer's retirement plan, there are seven optional retirement allowances, three of which (Options 1, 2, and 3) the parties agree qualify as "survivor benefits."[6] Each option is significantly different in terms of cost to Folderauer and benefit to Geckle.

As we have previously observed: "[a] contract's silence on a particular issue does not, by itself, create ambiguity as a matter of law, even though *silence creates ambiguity when it involves a matter naturally within the scope of the contract*." *Azat*, 162 Md. App. at 551 (emphasis added). The MSA in this case states that the parties intended to "fully settl[e] and determin[e] all of their respective rights and obligations growing out of or incident to their marriage[,]" and that "survivor benefits" were "assign[ed]" to Geckle. As a result, it is clear that the question of what survivor benefits Geckle is entitled to receive is naturally within the scope of the MSA, and silence on this issue creates an ambiguity in the MSA. *Id.* at 551, 553.

Second, the ambiguity regarding which retirement allowance option was intended for Geckle could have been resolved in the MSA by designating one of the parties to choose the option that Geckle will receive. The MSA, however, does not explicitly state which party has the right to select the retirement allowance option to which Geckle is entitled, and thus creates another ambiguity.

According to Folderauer, any ambiguity can be resolved by reference to the statute that created the optional retirement allowances under his retirement plan. As we have held,

[6] At the motions hearing before the trial court, the parties appeared to agree that Options 5 and 6 also qualify as "survivor benefits."

"[p]arties to a contract are presumed to contract mindful of the existing law, and all applicable or relevant laws must be read into the agreement of the parties just as if expressly provided by them, except where a contrary intention is evident." *Hearn v. Hearn*, 177 Md. App. 525, 535 (2007). Accordingly, we turn to the BCC to see if it can be of assistance in determining who is entitled to select the "survivor benefits" option to which Geckle is entitled. *See id.* at 535-36 (addressing the issue of whether "the applicable federal regulations resolve any ambiguity with respect to whether the [survivor annuity benefits order] should be construed to apply to [husband's] gross annuity benefit").

We agree with Folderauer that BCC § 5-1-231(a) states that the member, in this case Folderauer, selects one of the seven retirement allowance options. However, there is no statutory prohibition against a court order that requires a member to select a certain option. BCC § 5-1-255(b) provides that the Baltimore County Retirement System will honor court orders, judgments, and decrees:

> (b) **A benefit under this title shall be payable:**
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> (1) **In accordance with the provisions of any** judgment, decree, or **order that**:
>
> (i) Creates for, or **assigns to**, a spouse, **former spouse**, child, or other dependent **of a member the right to receive all or a portion of the member's benefits under the retirement system for the purpose of providing** child support, alimony payments, or **marital property rights to that** spouse, **former spouse**, child, or dependent;
>
> (ii) Is issued in accordance with a state domestic relations law;
>
> (iii) Does not require the retirement system to provide any type of benefit or any option not otherwise provided under the

> retirement system; and
>
> (iv) Otherwise meets the requirements of § 206(d) of ERISA, as amended, as a "qualified domestic relations order" as determined by the Board of Trustees[.]

(Emphasis added). The above provision of the BCC thus indicates that the Baltimore County Retirement System will honor a QDRO that requires a member to select a certain retirement allowance as long as the allowance is one of the options offered by the retirement system.

Moreover, we are unpersuaded by the trial court's conclusion that Vazquez's letter stating that "[u]pon [r]etirement, [ ] Folderauer must elect one of the survivor benefit options naming [Geckle] as the surviving beneficiary" means that a QDRO ordering Folderauer to select a particular option would not be honored by the Baltimore County Retirement System. The QDRO submitted for Vazquez's approval did not specify any of the retirement allowance options, but did specify that the option must be one that would pay Geckle a survivor benefit for life. The letter did not address whether a court could order a member to select a certain option under BCC § 5-1-231(a), and the fact that Vazquez approved a QDRO limiting Folderauer's retirement allowance option to a lifetime annuity suggests that a more specific QDRO would not be rejected by the Baltimore County Retirement System. In the absence of any prohibition against a court ordering a member to select a certain retirement allowance option, we conclude that the BCC does not resolve the ambiguity in the MSA regarding which party has the right to select the retirement allowance option for Geckle.

Geckle, in turn, attempts to resolve any ambiguity concerning who chooses Geckle's

"survivor benefits" by directing this Court to focus on the term "assign." In Geckle's view, the use of the term "assign" means that Folderauer transferred his right to select the retirement allowance option that Geckle is entitled to receive, because an assignment is a transfer of a right, which includes the right to select that option. In response, Folderauer contends that the word "assign," when read in the context of the entire MSA, means only "designate" or "name," because under the BCC Folderauer's retirement plan mandates that a "'member' make the election and perform related duties associated with it." The aforementioned arguments of the parties demonstrate to us that the MSA "is ambiguous[, because] it is subject to more than one interpretation when read by a reasonably prudent person" as to who is entitled to select the retirement allowance option for Geckle. *Pulliam*, 222 Md. App. at 588 (internal quotation marks and citation omitted).

When a "contract is ambiguous, the court considers extrinsic evidence clarifying the parties' intentions at the time the contract is executed." *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 234 (2013); *see also Prison Health Servs., Inc. v. Balt. Cty.*, 172 Md. App. 1, 9 (2006) ("When contract language is ambiguous, its meaning becomes a question of fact and extrinsic evidence may be considered to determine the intent of the parties."). Here, unfortunately, no extrinsic evidence was introduced or proffered, because both parties took the position that the MSA was unambiguous. To decide the instant appeal on the record now before us would require us to assume that no extrinsic evidence exists. We decline to make such assumption, because if extrinsic evidence does exist, our decision may not be consistent with the intent of the parties, and thus fail to render substantial justice. Moreover, any interpretation of the MSA will have significant

economic consequences for the parties. Accordingly, we will vacate the judgment of the circuit court and remand the case to that court for the purpose of allowing the parties to adduce (1) extrinsic evidence, if any, on the issue of whether the parties intended Geckle to receive a particular optional allowance under Folderauer's retirement plan, and (2) if there is none on that issue, extrinsic evidence, if any, on the issue of which one of the parties did they intend to make the choice of the optional allowance that Geckle would receive as her survivor benefit. *See Heyda v. Heyda*, 94 Md. App. 91, 106 (1992) (remanding to the circuit court "for the limited purpose of permitting the parties to produce evidence of their intent in granting 'survivorship' benefits in [appellant's] pension to [appellee,]" which was contained in a joint stipulation previously placed on the record).

Upon remand, if no extrinsic evidence is adduced by the parties or if such evidence is not persuasive to the trial court on the above issues, the issue to be decided is which one of the parties would "a reasonable person in the position of the parties" believe was intended to select the optional allowance as Geckle's survivor benefit. *See Pulliam*, 222 Md. App. at 587 (internal quotation marks and citation omitted). That decision should focus on the meaning of the word "assign" in the provision of the MSA that states: "Husband shall assign to Wife the survivor benefits of the Baltimore County Retirement Plan ("Pension"), the costs of which shall be solely born by Husband." An assignment is a transfer of rights, not a delegation of duties. *See Pub. Serv. Comm'n of Md. v. Panda-Brandywine, L.P.*, 375 Md. 185, 197 (2003) (stating "using the term 'assignment' to refer to the transfer of contractual rights and the term 'delegation' to refer to the transfer of contractual duties"). Here, Folderauer has two rights under his retirement plan relevant to

the instant appeal: (1) the right to give one of the optional retirement allowances to a designated beneficiary, and (2) the right to select that allowance. It is undisputed that under the MSA Folderauer "assigned" the first right to Geckle so that she would receive an optional retirement allowance that would qualify as a "survivor benefit." The remaining issue then is whether or not Folderauer's "assignment" under the MSA carried with it the right to select the optional allowance that Geckle would receive. That determination will be left to the good judgment of the trial court, in the first instance.

II.

For the guidance of the trial court on remand, we will address Geckle's second question on appeal: Did the trial court err in ordering Folderauer to select the survivor benefit option for Geckle at the time of his retirement? The premise to this question is that Folderauer is entitled to choose the retirement allowance option that Geckle will receive under his retirement plan. Without deciding, we will proceed on that premise also.[7]

Geckle contends that the trial court erred by authorizing Folderauer to select a retirement allowance option for Geckle at the time of his retirement. Geckle argues that by permitting this delay, she could "receiv[e] an option which was not available at the time of the parties' agreement" and thus was not contemplated by either party at the time of the execution of the MSA, or she might be denied a survivor benefit altogether. Geckle is also concerned that she will not be notified of Folderauer's selection until after his death, which

[7] There is also an implicit premise that there is no extrinsic evidence relating to this question. Our discussion of this question does not preclude the parties from introducing relevant extrinsic evidence, nor does our discussion bind the trial court in its decision if such evidence is admitted and relied upon by the court.

could limit her ability to seek court assistance if Folderauer's selection "results in her being denied survivor benefits."

Folderauer responds that both of Geckle's proposed QDROs permitted Folderauer to select the retirement allowance option upon his retirement. He also contends that making the selection at the time of his retirement is consistent with BCC § 5-1-231(a) and Vazquez's letter.

The MSA is silent as to when Folderauer is to select the retirement allowance option for Geckle. The BCC also does not provide when the election is to be made, except that the election must be made "prior to the first retirement allowance payment normally due." BCC § 5-1-231(a). Although Vazquez's letter states that Folderauer "must elect" one of the survivor benefit options "[u]pon [r]etirement," such statement could have been the result of the QDRO's failure to specify Geckle's retirement allowance option.

QDROs concern future rights and payments and are routinely entered years, sometimes decades, prior to the effective date of the order. *See, e.g.*, *Robinette v. Hunsecker*, 439 Md. 243, 253 (2014). Likewise, in the instant case, the parties do not dispute that a QDRO may be entered now to take effect upon Folderauer's retirement.

Regarding the actual selection of the retirement allowance option, it is important to distinguish between (1) the ministerial task of filling out the forms selecting the option and filing the same with the Board of Trustees, *see* BCC § 5-1-231(a), and (2) the decisional task of choosing which option is to be given to Geckle. The two events can occur simultaneously or sequentially. In other words, with the entry of a QDRO now, to take effect upon Folderauer's retirement, there is nothing to preclude the trial court from

ordering Folderauer to make the decision now on which retirement allowance option will be "assigned" to Geckle and including that decision in the QDRO, with the ministerial task of effectuating that decision occurring at the time of retirement.

Indeed, the above result is consistent with the provision of the MSA assigning survivor rights to Geckle. Section 12 of the MSA, entitled "Retirement," states in part:

> Each party shall execute such documents and perform such acts as may be necessary to effectuate the purposes of this Paragraph, including, but not limited to, the **execution of such documents and performances of such acts as may be required to have the terms of this Paragraph incorporated in a QDRO** . . . .

(Emphasis added). Because this "Paragraph" assigns survivor benefits to Geckle, the failure to specify what those survivor benefits are in the QDRO would not be incorporating "the terms of this Paragraph in a QDRO." Moreover, to do otherwise would be to construe the MSA in such a way that creates an ambiguity, namely the retirement allowance option constituting the "survivor benefits" due to Geckle will be unknown. A contract should not be construed to create an ambiguous result. *Cf. Fister v. Allstate Life Ins. Co.*, 366 Md. 201, 217-18 (2001) ("a court may not create ambiguity or uncertainty where none otherwise exists."). Therefore, a QDRO permitting the selection of the retirement allowance option for Geckle at the time of Folderauer's retirement appears to us to be inconsistent with the MSA.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY VACATED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.