

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHAEL BRENT PETERS

Appellee

v.

KELLEY ANNE PETERS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1970 WDA 2012

Appeal from the Order November 15, 2012
In the Court of Common Pleas of Indiana County
Civil Division at No(s): 11405 CD 2011

BEFORE: BOWES, J., MUNDY, J., and COLVILLE, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 06, 2013

Appellant, Kelley Anne Peters (Wife), appeals from the November 15, 2012 order finding that Appellee, Michael Peters (Husband), was not obligated to continue to pay spousal support following the entry of a final divorce decree. After careful review, we reverse and remand for proceedings consistent with this memorandum.

The trial court has set forth the following facts and procedural history.

[Husband and Wife were] married on April 27, 1996. A Complaint in Divorce was filed on July 22, 2011 by Husband. Both parties filed Affidavits of Consent on July 6, 2012, and on August 9, 2012 President Judge Martin entered a Divorce Decree incorporating the parties['] Marriage Settlement Agreement of July 28, 2012.

* Retired Senior Judge assigned to the Superior Court.

On October 24, 2012, Wife filed a Petition to Enforce a Marriage Settlement Agreement, which *inter alia* averred that Husband has refused to pay Wife spousal support of \$947 per month from August 2012. An argument and hearing on this issue occurred on November 15, 2012.² At issue were the following provisions of the Marriage Settlement Agreement:

7.7 Husband shall continue to pay child support as per the current Domestic Relations Order at PACSES Number 239111811, dated December 22, 2010, in the amount of \$1,351.00, and may be modified at any time by the Domestic Relations Section following a petition for modification filed by either party.³

7.8 Husband shall pay alimony to wife in the total amount of \$10,000.00. Said payments shall be made in equal monthly installments, provided they are not less than \$500.00 per month. The first payment is due on or before July 15, 2012.⁴ Upon receipt of the lump sum payment, or the final payment of \$500.00, totaling \$10,000.00, the Domestic Relations Order at PACSES Number 239111811 shall be modified to include only child support, and Wife shall forgive arrears in the amount of \$4,300.00. In the event that Domestic Relations will not collect the alimony as set forth in this paragraph, said payments are to be made directly to Wife, on or before the 15th of the month. Wife shall forego all collection attempts and contempt proceedings on \$4,300.00, of the Domestic Relations arrear balance, until the total alimony payment of \$10,000.00, is paid in full, provided, Husband remains current on his monthly alimony payment.

As further background the Court includes a summary of the relevant pleadings and orders from the parties' Domestic Relations Section ("DRS") support action. Wife filed a support action for

spousal and child support on July 26, 2010. An Office Conference occurred on December 22, 2010. The parties came to an agreement for a total order of \$2,200 per month current support and \$50 per month on the arrears. Although the Order was unallocated, the DRS Support Agreement Form shows that \$1,351 of the Order was for child support and \$849 of the Order was for spousal support. Husband filed a Petition for Modification of an Existing Support Order on February 21, 2012. An Office Conference occurred on April 23, 2012 and recommended order of \$2,256 current support and \$50 on the arrears was approved on April 23, 2012. The Support Guidelines Calculation form shows that \$1,309 was the Husband's child support obligation and \$947 was his spousal support obligation. Husband requested a de novo support hearing. His attorney subsequently withdrew this request due to the parties entering into a Marriage Settlement Agreement. On September 26, 2012, following the entry of the parties' divorce, President Judge William J. Martin approved an administrative order terminating Wife's spousal support effective August 9, 2012 (the date of the divorce decree).

² A civil support contempt proceeding also occurred on the same date and the record of that is part of the transcript.

³ This provision references a prior child support order. The current child support order entered on April 23, 2012 obligates Husband to pay \$1,309 per month.

⁴ There is a handwritten notation on the Marriage Settlement Agreement modifying the date of the first payment from June 15, 2012 to July 15, 2012.

Trial Court Opinion, 2/11/13 at 1-3 (footnotes in original).

Pertinent to this appeal, we note that the portion of the November 15, 2012 order Wife challenges, states the following.

4. The [trial court] interprets 7.8 of the Marriage Settlement Agreement to obligate the Plaintiff/Husband to pay the total sum of \$10,000 as alimony, either as a lump sum or in monthly installments to the Defendant/Wife. The [trial court] does not find that the Plaintiff/Husband is responsible for continuing to pay the spousal support ordered previously by the Domestic Relations Section in the amount of \$947 per month. The [trial court] finds that the entry of the parties divorce decree on August 9, 2012, terminated the Wife's entitlement to Spousal Support and the [H]usband's obligation to pay said sum.

Trial Court Order, 11/15/12, at 1. On December 14, 2012, Wife filed a timely notice of appeal.¹

On appeal, Wife raises the following issue for our review.

1. Whether the [t]rial [c]ourt erred in finding that Husband was not responsible to continue to make spousal support payments in the amount of \$947.00/month when the plain language of the Marital Settlement Agreement, executed by the parties, specifically and unambiguously states that said payments would not be terminated until the amount of \$10,000.00, was paid in full to Wife, by Husband?

Wife's Brief at 4.

We review an order interpreting a marital settlement agreement to determine whether the trial court committed an error of law or an abuse of discretion. ***Tuthill v. Tuthill***, 763 A.2d 417, 419 (Pa. Super. 2000) (*en banc*), *appeal denied*, 775 A.2d 808 (Pa. 2001). "We do not usurp the trial

¹ Wife and the trial court have complied with Pa.R.A.P. 1925(b).

court's fact-finding function. In interpreting a marital settlement agreement, contract principles apply." *Id.* (citation omitted). Furthermore,

[i]t is well-established that the law of contracts governs marital settlement agreements. **Vaccarello v. Vaccarello**, 563 Pa. 93, 757 A.2d 909, 914 (2000). It is also well established that under the law of contracts, in interpreting an agreement, the court must ascertain the intent of the parties. **Robert F. Felte, Inc. v. White**, 451 Pa. 137, 302 A.2d 347, 351 (1973).

In cases of a written contract, the intent of the parties is the writing itself. If left undefined, the words of a contract are to be given their ordinary meaning. **Pines Plaza Bowling, Inc. v. Rossvie, Inc.**, 394 Pa. 124, 145 A.2d 672 (1958). When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. **Hutchison v. Sunbeam Coal Corp.**, 513 Pa. 192, 519 A.2d 385, 390 (1986). When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances. **Steuart v. McChesney**, 498 Pa. 45, 444 A.2d 659, 663 (1982); **Herr's Estate**, 400 Pa. 90, 161 A.2d 32, 34 (1960). A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. **Hutchison**, 519 A.2d at 390. While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact. **Community College v. Society of the Faculty**, 473 Pa. 576, 375 A.2d 1267, 1275 (1977).

Kripp v. Kripp, 849 A.2d 1159, 1163 (Pa. 2004). Additionally, it is well settled in Pennsylvania that the law of contracts governs a separation agreement if the agreement is not merged into a divorce decree. **Nessa v.**

Nessa, 581 A.2d 674, 676 (Pa. Super. 1990) (holding “separation or property settlement agreements for support remain as contracts to be enforced at law or in equity unless they are merged into a divorce decree or court [o]rder”).

Instantly, Wife asserts that “the parties voluntarily entered into the marital settlement agreement, each with the advice of independent counsel.” Wife’s Brief at 8. Additionally, Wife avers the “clear and unambiguous language of the parties’ Marital Settlement Agreement states that this particular order ‘SHALL BE MODIFIED TO INCLUDE ONLY CHILD SUPPORT’ only ‘UPON RECEIPT OF THE LUMP SUM PAYMNET (sic) OR FINAL PAYMENT OF \$500.00.’” **Id.** at 9 (emphasis in original). Accordingly, Wife asserts that “based on the plain language of the contract, Wife is entitled to continue to collect the entire support order, including both child and spousal, until the total amount of \$10,000.00, is paid by Husband.” **Id.**

In support of this averment, counsel for Wife made the following argument at the November 15, 2012 hearing.

Once the \$10,000 was paid, then the current support order would be modified to include only the child support. As you discussed in chambers, I indicated to you that it was our understanding that, that would mean that the payments per month were twenty two fifty six per month, which included child support and spousal support payments to the wife. Upon receipt of this lump sum payment of \$10,000, which we have agreed in this agreement could be made at minimum payments of \$500 a month, [Wife] would then agree to modify this support order to only include child support. Which we specified in this

agreement to be approximately thirteen fifty one per month. In addition, upon receipt of this \$10,000 lump sum payment, [Wife] would also agree to forgive arrears in the amount of \$4,300. To date [Husband], as discussed in chambers, has made monthly payments of \$500 for the months of June, July, August[,] September and October. Today is now November 15th, and we have not yet received the \$500 for November. He is current with those \$500 payments towards the \$10,000 lump sum, which would then bring his balance to \$7,000 still owed under that lump sum arrangement. However the additional payment, due to Domestic Relations receiving the divorce decree in this matter, the support order was modified unilaterally by Domestic Relations to include just the child support as of August 9th of 2012.

N.T., 11/15/12, at 1.

Instantly, the issue before us is whether Husband was obligated, pursuant to the Agreement, to continue to pay the \$947.00 in spousal support to Wife even though DRS terminated the portion of Husband's support obligations representing spousal support after the divorce decree was entered. In disposing of Wife's motion, the trial court concluded that the Agreement unambiguously required Husband to pay Wife alimony **and** spousal support until he satisfied the alimony obligation. N.T., 11/15/12, at 70-71. Upon the payment of the full amount of alimony, the support order would be reduced to reflect Husband's child support only. **Id.** at 71. The trial court continued, however, that since the divorce decree extinguished Wife's right to spousal support, the provision requiring Husband to pay spousal support was rendered inapplicable by operation of law. **Id.** Indeed,

the trial court opined, “just for you to understand my logic, if however, the parties were still married today, in my opinion, [Husband] would owe \$947[.00] for August, September, October and November if there was no Divorce Decree today.” ***Id.*** at 71-72.

The trial court reiterated this position in its Rule 1925(a) opinion.

If the divorce had not occurred, then Husband’s spousal support obligation would have continued until the alimony was paid in full.⁶ As noted by the [trial c]ourt at the proceeding, a lapse of time can occur between the execution of a postnuptial agreement and the entry of a final decree in divorce. Conversely, if Husband had paid the alimony in full before the divorce decree was entered, then his spousal support obligation would have ended at that point. For example, if Husband had paid Wife \$10,000 in June 2012, then he would not have had a spousal support obligation for July and August 2012.

⁶ The [trial c]ourt acknowledges that Article VI, Paragraph 6.2 of the Marriage Settlement Agreement contemplated the prompt entry of a divorce decree.

Trial Court Opinion, 2/11/13, at 8 (citation to record omitted).

Therefore, it is undisputed that the trial court believed that Husband’s spousal support obligation of \$947.00 was to continue until the alimony was paid in full. Nevertheless, the trial court determined that because the parties did not include a provision to convert the spousal support to alimony upon the entry of the divorce decree, Husband was no longer obligated to make said payment. For the following reasons, we disagree.

At the outset, we note that Wife is not challenging the propriety of the domestic relations order terminating her right to court-ordered spousal support.² Rather, she seeks to enforce a wholly independent contractual right to payment that survived the divorce decree. As the trial court correctly acknowledged, Husband's contractual duty to pay Wife spousal support would not be eliminated until Husband had paid \$10,000.00 in alimony. As the acknowledged duty to provide support pursuant to paragraph 7.8 of the Agreement was derived from the unambiguous terms of the contract rather than the perpetuation of the parties' marriage, said agreement survives the entry of the divorce decree and is enforceable under principles of contract. ***Nessa, supra.***

According to the unambiguous terms of the Agreement, Husband was required to pay Wife \$947.00 per month until he satisfied his independent alimony obligation of \$10,000.00. Notwithstanding the trial court's recognition of this conclusion and its recognition that the commitment would have endured if the parties had styled the payments as additional alimony,

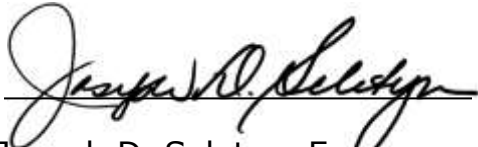
² The law of this Commonwealth supports the DRS order terminating Wife's court-ordered right to spousal support following the entry of the divorce decree. Spousal support is specifically designed to ensure that the dependent spouse can maintain reasonable living expenses, and a spousal support order terminates upon the entry of the divorce decree. ***See Horn v. Horn***, 564 A.2d 995, 996 (Pa.Super. 1989) (citations omitted) (holding "[t]he duty to provide spousal support is derived from marital obligations, and that duty terminates when the marriage does[']").

the trial court subsequently refused to enforce Husband's contractual obligation. Accordingly, because Husband's contractual duty to Wife survived the divorce decree even though the decree extinguished his court-ordered obligation to pay spousal support, we conclude the trial court abused its discretion in concluding that Husband's spousal support obligations to Wife had terminated. We further conclude that Husband remains contractually obligated to pay directly to Wife \$947.00 per month until he satisfies the alimony requirement. Therefore, we reverse the trial court's November 15, 2012 order and remand for proceedings consistent with this memorandum.

Order reversed. Case remanded. Jurisdiction relinquished.

Judge Colville notes dissent.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/6/2013