

NOTICE

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2018 IL App (4th) 180191-U

NO. 4-18-0191

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 20, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> MARRIAGE OF CHRISTINE M.)	Appeal from the
REILING, a/k/a CHRISTINE M. CREEK,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
and)	No. 06D525
SEAN W. REILING,)	Honorable
Respondent-Appellant.)	Randall B. Rosenbaum,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed, finding the trial court erred by granting petitioner’s motion for a judgment clarifying order, which stated she was entitled to 24% of respondent’s current monthly retirement amount and remanded for further proceedings.

¶ 2 Petitioner, Christine M. Reiling, also known as Christine M. Creek, and respondent, Sean W. Reiling, were married for 13 years. A petition for dissolution of marriage was filed in October 2006, and the parties entered into a marriage settlement agreement. The trial court incorporated the marriage settlement agreement into the judgment filed in November 2006. After respondent retired in 2016, petitioner filed a motion for a judgment clarifying order, requesting she be deemed an irrevocable beneficiary and therefore be entitled to 24% of respondent’s disposable retirement pay. The trial court granted the motion.

¶ 3 On appeal, respondent argues the trial court erred in its interpretation of the marriage settlement agreement because the language of the agreement shows the intent of the

parties was to freeze the pension amount owed after the dissolution of marriage. We reverse and remand for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 In June 1993, petitioner and respondent were married, and two children were born during the marriage. In October 2006, petitioner filed a petition for judgment of dissolution of marriage. The parties subsequently filed a marriage settlement agreement and a parenting agreement, both of which were incorporated into the judgment dissolution. In January 2017, petitioner filed a motion seeking judicial clarification of the clause regarding division of respondent's pension after his retirement.

¶ 6

The language for which petitioner sought clarification reads as follows:

“As to **SEAN W. REILING**'s pension with the United States Air Force, **CHRISTINE M. REILING** shall receive an interest equal to $50\% \times$ (the number of months of the parties marriage) divided by (number of months Husband [(respondent)] was a plan participant), determined as of the date of a judgment of dissolution of marriage between the parties. That is, Wife's [(petitioner's)] interest in said plan shall be frozen as of the date of said judgment, except that Wife's interest in said plan shall continue to appreciate or depreciate on account of investments upon the aforesaid frozen amount, as said plan appreciates and depreciates from the date of the judgment, and Wife shall not be entitled to any additional value on account of any contributions [to] said plan whether by Husband or employer, after the date of entry of said judgment. Wife shall be

entitled to her interest in said plan if and when, and on the same terms of payment as said plan if paid to Husband, and Wife shall be entitled to exercise all options under said plan as Husband.”

(Emphasis in original.)

¶ 7 The trial court allowed the parties to submit written arguments. Respondent argued the amount owed to petitioner is a calculation of 50% multiplied by the number of months of the marriage times the pension amount at the time of the dissolution of marriage divided by the months respondent was a plan participant as of the dissolution of marriage. Petitioner argued the agreement stated she was entitled to 50% of the amount at the time of retirement multiplied by the number of months of the marriage divided by the months respondent was a plan participant. The court granted petitioner’s motion for a judgment clarifying order in January 2018. Respondent filed a motion to reconsider in February 2018. The trial court reiterated its previous order, requiring respondent to pay 24% of his current monthly retirement amount to petitioner. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Respondent argues the trial court erred in its interpretation of the language of the October 2006 marital settlement agreement in the section related to respondent’s division of pension benefits. We agree.

¶ 10 “A marital settlement agreement is a contract.” *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26, 980 N.E.2d 261. “A court construes the settlement provisions within a dissolution judgment so as to give effect to the intention of the parties, and where the terms are unambiguous, the parties’ intent is determined solely from the language of the instrument.” *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 759, 732 N.E.2d 667, 671 (2000). “Ambiguity exists

where the language is reasonably susceptible to more than one meaning. Language is not rendered ambiguous simply because the parties do not agree on its meaning.” *Mulry*, 314 Ill. App. 3d at 759. The intent of the parties “is determined from the instrument as a whole, and it is presumed that the parties inserted each provision deliberately and for a purpose.” *Mulry*, 314 Ill. App. 3d at 760. We will not construe the terms and provisions of a marital settlement agreement in a manner “contrary to or different from the language’s plain and obvious meaning.” *In re Marriage of Turrell*, 335 Ill. App. 3d 297, 305, 781 N.E.2d 430, 438 (2002). “Interpreting a marital settlement agreement is a question of law, which we review *de novo*.” *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 330, 815 N.E.2d 1251, 1255 (2004).

¶ 11 In the case before this court, the parties dispute whether the division of respondent’s pension should have been calculated at the time of the dissolution of marriage or at the time of respondent’s retirement from the United States Air Force. Respondent also contends, alternatively, the language of the settlement agreement is ambiguous and he should be able to submit parole evidence to the trial court. We find the language of the marital settlement agreement is not ambiguous, and a plain language reading of the agreement reveals the parties’ intent. Based upon our reading of the plain language of the agreement, the parties intended to freeze petitioner’s interest, which is shown in the language stating, “Wife’s interest in said plan shall be frozen as of the date of said judgment [(of dissolution of marriage)].” The “freezing” language indicates her interest is limited to the period in which the parties were married, *i.e.*, the months of the marriage, not the total pension. The language of the agreement clearly stated, “Wife shall not be entitled to any additional value on account of any contributions [to] said plan whether by Husband or his employer.” While it may have been easier to immediately divide the requisite amount of respondent’s pension and allocate it to petitioner at the time of the

dissolution, the failure to do so did not rewrite the contract. The contract stated petitioner was only entitled to interest on the frozen amount, which was based on the calculation of the time they were married divided by the length of time respondent was a plan participant, at the time of dissolution, multiplied by 50% of the amount of the pension at the time the marriage was dissolved.

¶ 12 The trial court appeared to ignore the plain language of the agreement and sought to fit it within the parameters of what is known as the “*Hunt* formula,” derived from *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 397 N.E.2d 511 (1979). This reserved-jurisdiction approach to pension distribution calculates the marital portion of each pension payment by fractions, with the numerator being the number of years of marriage during which benefits were accumulated and the denominator being the total number of years benefits accumulated prior to payment. Relying on *In re Marriage of Culp*, 399 Ill. App. 3d 542, 936 N.E.2d 1040 (2010), the court concluded that although the parties specifically agreed to “freeze” petitioner’s marital share at the date of dissolution, that was not what they actually meant.

¶ 13 In *Culp*, the settlement agreement provided for retirement benefits to be “equally divided as of [the date of dissolution], pursuant to a separate QILDRO to be entered by agreement of the parties ***.” (Internal quotation marks omitted.) *Culp*, 399 Ill. App. 3d at 544. The Qualified Illinois Domestic Relations Order (QILDRO) set forth a specific formula: $(A/B) \times C \times D$, where A equaled the months of service from the date of marriage to the date of divorce, divided by B, total months of service, multiplied by C, the gross amount of the retirement benefit at retirement, multiplied by D, percentages noted in C in the order. Further, the order provided for postretirement increases to also cause a recalculation of the proportionate annual share payable to the respondent. *Culp*, 399 Ill. App. 3d at 544-45. The petitioner in *Culp*, who was the

retiree, contended the QILDRO did not comport with the language of the settlement agreement, and the court found he was bound by the language of the QILDRO. *Culp*, 399 Ill. App. 3d at 546. The trial court in *Culp* also found it was the intention of the parties to divide benefits “using the customary formulaic approach.” (Internal quotation marks omitted.) *Culp*, 399 Ill. App. 3d at 546. In addition, the court said there was no clear and unambiguous agreement that the respondent was to receive a specific amount at some time in the future with no interest or increase in value through the intervening years.

¶ 14 Such is not the situation before this court, nor was it the situation before the trial court. There was no dispute between the plain language of the agreement and a separate order because there was no QILDRO here. In this case, the language was straightforward. “Wife’s interest in said plan shall be frozen as of the date of said judgment, except that Wife’s interest in said plan shall continue to appreciate or depreciate on account of investments upon the aforesaid frozen amount, as said plan appreciates and depreciates from the date of the judgment, and wife shall not be entitled to any additional value on account of any contributions [to] said plan whether by Husband or employer, after the date of entry of said judgment.” Unlike *Culp*, here petitioner agreed to fix her portion at the value as of the date of divorce, coupled with any appreciation or depreciation of investments from that date until distribution.

¶ 15 Both parties knew this was a military pension. The record does not reflect exactly how a military pension is funded and whether it includes investments subject to appreciation or depreciation. Changes in rank, raises, or additional benefits received are not “appreciation or depreciation” of the retirement plan to which petitioner would be entitled. She agreed to be specifically excluded from any “additional value on account of any contributions to said plan whether by Husband or employer” after the divorce. The plain language of the agreement limits

petitioner's interest to appreciation or depreciation of "investments." Since petitioner divorced respondent, she is longer entitled to receive the benefit of promotions or advancements which occurred after the marriage. If the military pension plan includes investments, she is entitled to any increase or decrease of her proportionate share. She would also be entitled to any interest her share would receive by the date of distribution, assuming interest is earned on amounts held in a military pension. However, these are evidentiary matters best left to the trial court. While it may seem illogical to wait, we must presume "the parties inserted each provision deliberately and for a purpose," though that purpose may elude the court. *Mulry*, 314 Ill. App. 3d at 760. Courts are merely tasked with interpreting the contract and eliciting the parties' intent, not rewriting the contract. Thus, we find the trial court erred in basing the calculation on the full amount of the pension at the time of respondent's retirement instead of the amount at dissolution and remand to the trial court to receive additional evidence if necessary and determine the appropriate amount and to apply any interest if applicable. Having concluded the agreement is not ambiguous, there is no need to reach respondent's second claim, determining whether parole evidence should be admitted.

¶ 16

III. CONCLUSION

¶ 17 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings consistent with this order.

¶ 18 Reversed and remanded.