

STATE OF MICHIGAN
COURT OF APPEALS

RODNEY VINCENT BLIGHT,

Plaintiff-Appellant,

v

KATHLEEN ANN BLIGHT,

Defendant-Appellee.

UNPUBLISHED

June 25, 2020

No. 349034

Oakland Circuit Court

LC No. 2014-818867-DM

Before: LETICA, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted¹ the order regarding the motion of defendant to enforce a consent judgment of divorce (JOD) relative to property settlement. On appeal, plaintiff argues that the trial court erred by finding that the language regarding plaintiff's stock redemption proceeds in the parties' JOD was ambiguous. Plaintiff contends that the trial court additionally erred in its interpretation of the allegedly ambiguous provision of the JOD, when it found that the entirety of the proceeds should be halved, rather than distributing the proceeds proportionally on the basis of the amount of time plaintiff owned such shares. This appeal has been decided without oral argument pursuant to MCR 7.214(E). We reverse.

I. BACKGROUND

This case arises out of the divorce of the parties. The parties completed a mediation regarding their divorce, at the conclusion of which an audio recording was created to record the terms of the parties' settlement. Plaintiff, with the assistance of counsel, prepared a draft JOD on the basis of the mediation conference and recording of the settlement agreement reached at mediation. A hearing was held before the trial court to enter the JOD. Though defendant initially

¹ *Blight v Blight*, unpublished order of the Court of Appeals, entered June 11, 2019 (Docket No. 349034).

claimed that the draft JOD prepared by plaintiff did not conform to the settlement agreement on unrelated grounds, she signed it, and the trial court entered the JOD.

The provision of the judgment on appeal concerns plaintiff's redemption proceeds from restricted stock shares of his former employer, Rainbow Child Care Center (Rainbow). As a condition of the purchase agreement for these shares, plaintiff would be eligible for redemption proceeds from the stock only if he were to remain employed at Rainbow if and when Rainbow was purchased by a holding company, Rainbow Early Education Holding LLC (REE). If plaintiff were to be terminated, or voluntarily leave, before Rainbow was sold, plaintiff would receive no proceeds from the shares.

Approximately one year after the entry of the JOD, Rainbow redeemed all restricted shares owned by plaintiff as a part of a sale of the corporation. Under plaintiff's new employment agreement with Rainbow's new holding company, REE, the redemption proceeds were deposited into plaintiff's counsel's escrow account on two separate days. Plaintiff calculated defendant's marital share of the proceeds by applying a proportional fraction to the total proceeds received in relation to the total time plaintiff owned the stock during the marriage over the duration of plaintiff's ownership of the stock before it was redeemed; plaintiff then divided the marital share in half, and provided this sum to defendant.

Defendant filed a motion to enforce the JOD regarding the property settlement, arguing that plaintiff violated the terms of the relevant provision relating to the division of plaintiff's restricted stock redemption proceeds (i.e., paragraph 19 of the JOD) by failing to pay her 50% of the total redemption proceeds. After a hearing on the motion, the trial court found that paragraph 19 of the JOD was ambiguous, and, after reviewing both parties' evidentiary briefs and a portion of the transcript of the settlement agreement recording, found that defendant was entitled to 50% of the total redemption proceeds. The trial court entered an order granting defendant's motion to enforce JOD relative to property settlement. This appeal ensued.

II. STANDARD OF REVIEW

"A consent judgment is in the nature of a contract, and is to be construed and applied as such." *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). "[T]he interpretation of a contract is a question of law reviewed de novo on appeal, including whether the language of a contract is ambiguous and requires resolution by the trier of fact." *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005).

III. ANALYSIS

"Property settlement provisions in a divorce judgment are typically final and cannot be modified by the court." *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). "Absent fraud, duress, or mutual mistake, courts must uphold divorce property settlements reached through negotiation and agreement of the parties." *Id.* "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written.*" *Kendzierski v Macomb Co*, 503 Mich 296, 312; 931 NW2d 604 (2019) (citation omitted). "When a court abrogates unambiguous contractual provisions based on its own independent assessment of 'reasonableness,' the court undermines the parties' freedom of contract." *Id.* (Citation omitted).

“[I]f a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous” *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982).

Plaintiff argues the trial court erred in its determination that the provision of the JOD relating to the division of plaintiff’s restricted stock redemption proceeds was ambiguous. Plaintiff contends that paragraph 19 of the JOD plainly indicates that defendant’s marital share was to be calculated by applying a proportional formula. That formula calculated defendant’s distribution of the proceeds on the basis of the duration of plaintiff’s ownership of the stock shares before the JOD was entered in relation to the duration of plaintiff’s ownership of the stock shares before the stock shares were redeemed (the “marital proceeds”). Defendant would then receive one-half of the marital proceeds. Plaintiff further asserts that, even if the provision was properly considered ambiguous, extrinsic evidence indicated that plaintiff’s interpretation was correct. We agree.

The relevant JOD provision, while perhaps inartfully worded, is nevertheless unambiguous. Paragraph 19 of the JOD states:

Plaintiff is awarded his restricted stock in his employers company [sic] Rainbow Child Care Center free and clear of any claim of Defendant. However, if said restricted stock is redeemed by the company pursuant to a certain Rainbow Early Education Holding LLC, Restricted Unit Purchase Agreement dated 04/20/2011, Plaintiff shall pay Defendant 50% of any redemption proceeds based on the number of shares owned at the time of Entry of this Consent Judgment of Divorce and proportional to the number of years Plaintiff owned said stock while the parties were married and the total number of years Plaintiff owned said stock prior to said date of redemption. For the purposes of calculating this proportion, Plaintiff received said restricted stock on or about 04/20/2011.

The JOD clearly indicates that plaintiff does not pay defendant 50% of the total proceeds, but rather an amount proportional to the duration of plaintiff’s ownership of the stock shares during and after the parties’ marriage. Specifically, the JOD declares that plaintiff will pay defendant 50% of any proceeds on the basis of 1) the number of shares owned at a fixed point in time (i.e., the “number of shares owned at the time” the JOD was entered), *and* 2) proportional to the relative timeframe of plaintiff’s ownership of the stock during the marriage to the time he owned the stock before it was redeemed (i.e., “proportional to the number of years Plaintiff owned said stock while the parties were married and the total number of years Plaintiff owned said stock prior to said date of redemption.”).

The parties do not dispute the first figure for the calculation of defendant’s share of the proceeds: the number of restricted stock shares owned by plaintiff. Paragraph 19 of the JOD plainly indicates that defendant’s share of the proceeds is calculated in relation to the number of shares owned by plaintiff *at the entry of the JOD*. If subsequent shares were acquired by plaintiff after the divorce, such shares would not be included in the calculation of defendant’s marital portion under the plain language of the JOD. The parties do not dispute that the total number of shares owned by plaintiff at the time the JOD was entered was 102,857 shares, and that plaintiff owned the same number of shares when the stock was redeemed. Therefore, plaintiff correctly

based his calculation of defendant's marital portion on the total 102,857 shares of restricted stock owned by plaintiff at the time the JOD was entered.

Defendant nevertheless claims that the ambiguity of paragraph 19 of the JOD is apparent because the parties disagree on the correct interpretation regarding the remainder of the paragraph, and notes that the trial court declared at multiple instances during the proceeding that it was ambiguous. Yet "[a] contractual term is ambiguous on its face only if it is equally susceptible to more than a single meaning," or "if two provisions of the same contract irreconcilably conflict with each other[.]" *Kendzierski*, 503 Mich at 311 (citations omitted). Despite defendant's assertions to the contrary, the latter portion of paragraph 19 of the JOD is not prone to more than one reasonable interpretation. No other portion of the JOD affects, or otherwise relates to, plaintiff's obligations to pay defendant a portion of the stock redemption proceeds. The relevant language of paragraph 19 delineates that defendant will receive "50% of any redemption proceeds based on" the total shares owned at the entry of the JOD and "proportional to the number of years Plaintiff owned said stock while the parties were married and the total number of years Plaintiff owned said stock prior to said date of redemption." Use of the phrase "50% of any redemption proceeds based on . . ." designates that defendant will not receive 50% of the *total* redemption proceeds, but rather, 50% of the proceeds resulting from a calculation *on the basis of* the two listed inputs (i.e., the shares at the time the JOD was entered and proportional to plaintiff's ownership of the stock shares before the divorce). Additionally, the language of paragraph 19 designates exactly how this proportional amount is to be calculated: defendant's share of the proceeds will be reduced on the basis of the number of years plaintiff owned the 102,857 shares during the parties' marriage as a fraction of the total number of years plaintiff owned the 102,857 shares before their redemption.² This portion of the paragraph explicitly designates that the calculation is on the basis of the period of time plaintiff owned "*said stock*[,] " referring back to the "number of shares owned at the time of" entry of the JOD and thus clarifying that the proportional calculation relies on the duration of ownership of *these same shares*. Indeed, this comports with the use of the phrase "based on the number of shares owned at the time of Entry of" the JOD, which limits defendant's portion to proceeds from stock shares received by plaintiff during the marriage.

This Court would need to ignore the latter half of the paragraph that designates defendant's payment to be "proportional" to interpret paragraph 19 as defendant contends. "[C]ourts cannot simply ignore portions of a contract . . . in order to declare an ambiguity." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). Furthermore, "courts must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would

² For this reason, defendant is incorrect in her assertion that plaintiff erred by using the same denominator (i.e., the number of years plaintiff owned the 102,857 shares before their redemption) for calculating defendant's portion of the two payments made by REE in July of 2016 and June of 2017. All of plaintiff's stock shares were redeemed at the same time, when REE deposited the redemption proceeds into plaintiff's counsel's escrow account under plaintiff's new employment agreement with REE. The payments were made at different times because some funds were held back pending any outstanding obligations to REE. Therefore, plaintiff correctly inputted that plaintiff owned all of the 102,857 shares for a total of 62 months (approximately 5 years) before they were redeemed by REE.

render any part of the contract surplusage or nugatory.” *Id.* Defendant’s interpretation of paragraph 19 would leave the final sentence of the paragraph, which sets the date plaintiff received the stock shares as April 20, 2011, as surplusage. Were defendant to receive 50% of the redemption proceeds of the 102,857 shares, regardless of when the shares were redeemed, the date at which plaintiff received the shares would be irrelevant.

The trial court, therefore, erred in its determination that the language of paragraph 19 of the JOD was ambiguous. Because defendant does not assert that the JOD was formed on the basis of fraud, duress, or mutual mistake, the trial court was required to uphold the JOD as it was written. *Quade*, 238 Mich App at 226; see also *Kendzierski*, 503 Mich at 311 (“If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties’ intent as a matter of law.”) (Citation omitted). Furthermore, the trial court erred in considering extrinsic evidence to interpret unambiguous language within the JOD. See *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010) (noting that the parol-evidence rule prohibits use of extrinsic evidence to interpret unambiguous language in a contract).

Even if the language of paragraph 19 of the JOD were found to be ambiguous and properly considered extrinsic evidence, the trial court erred in determining that the intent of the parties was to give defendant 50% of the total redemption proceeds. “[I]f the language of a contract is ambiguous, courts may consider extrinsic evidence to determine the intent of the parties.” *Shay*, 487 Mich at 660. The trial court relied primarily on the portion of the settlement agreement recording that discussed the stock shares in interpreting the JOD:

This Court finds that with regard to the shares of stock, the shares of stock at the time of the marriage, at the time of the divorce, and at that time that the shares were redeemed, was 102,857. The Court finds that the equitable shares was [sic] to be 50 percent of the marital portion of the shares. The marital portion did not change. Ma’am, you’re entitled to your 50 percent of the shares.

However, the trial court’s determination that the marital portion of the redemption proceeds was on the basis of a possible variation in the number of stock shares is at odds with the settlement agreement as recorded. In an undisputed portion of the transcript of the recorded settlement agreement, the mediator states:

Mediator: But there is one asset that we’ve been attempting to deal with fairly and equitably, and that asset is a, uh, pursuant to [plaintiff’s] employment, there’s a Rainbow Early Education Holding LLC Restricted Unit Purchase Agreement, and it says that as of the date of a grant of stock he had 102,857 shares of common units subject to this unit purchase price, whatever that means. He got that April 20, 2011. The parties are getting divorced January 2, 2015. This appears to be, as of now, an unvested interest. Whether it ultimately vests or not depends on circumstances. Whether he receives any money or not depends on circumstances, but if he does, um, [defendant’s] right to a share proportional to the marital interest is preserved. It would be half the marital interest, and it would be whenever that happened, if it ever happened. If he gets nothing, she gets nothing. If he gets something, she gets *something*—it’s proportional to the length of the marriage, well, actually, I guess

not the length of the marriage, from April 20, 2011, through the date of the divorce.
[pause] What else should I say?

The mediator's statement indicates that defendant was to receive "half the marital interest" if plaintiff received proceeds from these particular shares, and that "if [plaintiff] gets something, [defendant] gets *something*" that was "proportional" "from April 20, 2011, through the date of the divorce." The trial court's interpretation relied on the finding that the marital portion of the proceeds did not change because the total amount of stock shares did not change between the parties' divorce and the redemption, but this conflicts with the mediator's statement that defendant's share of this specified, existing asset would be proportional to the length of time "from April 20, 2011, through the date of the divorce." The mediator did not discuss the possibility of plaintiff's acquiring additional stock shares because the only pertinent proportional consideration was the length of time plaintiff owned the stocks *before the entry of the JOD*. Indeed, both the mediator, and defendant's former counsel, described defendant's entitlement to the proceeds as half of the *marital portion*, and not half of the total redemption proceeds. Splitting the total redemption proceeds in half—as ordered by the trial court—is inconsistent with the settlement agreement's reference to defendant's receipt of half of the marital portion.

Therefore, the trial court erred when it concluded that paragraph 19 of the JOD, examined in conjunction with the settlement agreement, required a distribution of 50% of the total redemption proceeds to defendant. Paragraph 19 of the JOD is not ambiguous and must be enforced as written.

III. CONCLUSION

The trial court erred in its determination that the JOD was ambiguous. The plain language of paragraph 19 of the JOD indicates that the redemption proceeds are to be calculated on a proportional basis, in relation to the amount of time plaintiff owned the stock while the parties were married and the total number of years plaintiff owned the stock before redemption.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien