STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE ROBERT FETZER, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED October 21, 2014
v	No. 316900 Ontonagon Circuit Court
RONDA ANN FETZER a/k/a RONDA ANN BORKOVEC, Defendant-Appellant/Cross-Appellee.	LC No. 2011-000045-DO

Before: MURPHY, C.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Ronda Fetzer, appeals as of right from the judgment of divorce. She argues that because a paragraph of the parties' prenuptial agreement was ambiguous, the trial court erred in enforcing it. Plaintiff, Lawrence Fetzer, cross-appeals and contends that the trial court erred in finding that one sentence in the paragraph was inapplicable. We affirm in part and reverse in part.

I. FACTUAL BACKGROUND

The parties married in 2009. About two months before the marriage, the parties executed a prenuptial agreement, which included a paragraph (paragraph 14) addressing defendant's federal civil service annuity. Paragraph 14 provides as follows:

> Both parties hereby acknowledge that Prospective Wife's Civil Service annuity shall not be considered her separate property and therefore paragraphs 9, 12, and 14 of this agreement shall not apply to said retirement account. Prospective Wife and Prospective Husband hereby acknowledge that in the event of a marital separation or dissolution, it is agreed and understood that Prospective Husband shall be entitled to a share of Prospective Wife's annuity so that he shall qualify as a former spouse pursuant to the Civil Service Retirement Spouse Equity Act of 1984 in order to enroll in a health benefits plan under the Federal Employee Health Benefits Program. Prospective Wife and Prospective Husband do hereby agree to this provision as they anticipate making certain decisions concerning Prospective Husband's separate retirement accounts that will affect his ability to obtain health insurance. It is the intention of the parties, in the event

> of Prospective Wife's death, to provide the Prospective Husband 50% Survivor Benefit Base of the Prospective Wife's Civil Service Annuity at her retirement, which is anticipated to take place on or about January 31, 2009. In the event of a dissolution of marriage, the Prospective Husband shall receive an amount equal to the amount which would enable Prospective Husband to pay the monthly premiums for former spouse coverage with the Federal Employee Health Benefits insurance. Both parties do hereby acknowledge that with the rising costs of health care and health insurance, this provision is fair and equitable.

During divorce proceedings, the parties disagreed about what paragraph 14 requires. The court concluded that the agreement was unambiguous. Defendant argues that paragraph 14 of the agreement was ambiguous, while plaintiff on cross appeal argues that the court erred in concluding that paragraph 14 did not apply given the circumstances.

II. CONTRACT INTERPRETATION

Prenuptial agreements are contracts, *Reed v Reed*, 265 Mich App 131, 144; 693 NW2d 825 (2005), valid and enforceable absent special circumstances not present in this case. *Woodington v Shokoohi*, 288 Mich App 352, 372-373; 792 NW2d 63 (2010).[1] "There must be a meeting of the minds on all the material facts in order to form a valid contract[.]" *Siegel v Spinney*, 141 Mich App 346, 350; 367 NW2d 860 (1985). "[A] meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts." *Id*. If a contract is unambiguous, then it must be enforced according to its terms. *Reed*, 265 Mich App at 141. However, if a contract is ambiguous, then extrinsic evidence is admissible to determine the parties' actual intent. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). "A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other." *Woodington*, 288 Mich App at 374. A claim that a contract is ambiguous is a matter of law reviewed de novo. *Reed*, 265 Mich App at 141.

We agree with the trial court that paragraph 14 is unambiguous. It is undisputed that the first sentence of paragraph 14 provides that defendant's Civil Service annuity is marital property, and that the last sentence of paragraph 14 provides that the parties agree the provision in paragraph 14 is fair and equitable.

The second sentence provides as follows:

> Prospective Wife and Prospective Husband hereby acknowledge that in the event of a marital separation or dissolution, it is agreed and understood that Prospective

[1] "A prenuptial agreement may be voided (1) when obtained through fraud, duress, mistake, or misrepresentation or nondisclosure of material fact, (2) if it was unconscionable when executed, or (3) when the facts and circumstances are so changed since the agreement was executed that its enforcement would be unfair and unreasonable." *Reed*, 265 Mich App at 142-143. Here, the parties do not argue that the prenuptial agreement should have been voided for any of those reasons.

> Husband shall be entitled to a share of Prospective Wife's annuity so that he shall qualify as a former spouse pursuant to the Civil Service Retirement Spouse Equity Act of 1984 in order to enroll in a health benefits plan under the Federal Employee Health Benefits Program. . . .

Because the parties are divorced, i.e., there was a "dissolution," this sentence clearly applies to them. It provides that plaintiff "shall be" entitled to "a share" of defendant's annuity so that he "shall qualify" as a former spouse pursuant to the Civil Service Retirement Spouse Equity Act of 1984. The sentence further provides that the reason he needs to qualify as a former spouse is so he can enroll in a health benefits plan under the Federal Employee Health Benefits (FEHB) Program.[2]

The third sentence provides that the parties "do hereby agree to this provision as they anticipate making certain decisions concerning Prospective Husband's separate retirement accounts that will affect his ability to obtain health insurance." This sentence provides that the parties agreed to "this provision" because they anticipated making decisions that would affect plaintiff's ability to obtain health insurance. The parties do not dispute the meaning of this sentence.

The parties do dispute the meaning of the fourth sentence, which is the subject of the cross-appeal. The sentence provides: "It is the intention of the parties, in the event of Prospective Wife's death, to provide the Prospective Husband 50% Survivor Benefit Base of the Prospective Wife's Civil Service Annuity at her retirement, which is anticipated to take place on or about January 31, 2009." Defendant argues that this sentence would only apply if she had died before the parties divorced. Plaintiff argues that the sentence applies regardless whether defendant had died before the divorce or after the divorce.

The triggering event is clearly death. However, nothing in the language of the sentence indicates whether it is applicable only in the event of a pre-divorce death. Here, the trial court essentially rewrote this sentence as saying:

> It is the intention of the parties, in the event of Prospective Wife's death, [*so long as her death occurs before dissolution of the marriage*,] to provide the Prospective Husband 50% Survivor Benefit Base of the Prospective Wife's Civil Service Annuity at her retirement, which is anticipated to take place on or about January 31, 2009. . . . [Alteration and emphasis added.]

[2] A former spouse of a federal employee or annuitant is eligible to enroll in a Federal Employee Health Benefit (FEHB) health benefits insurance if: (1) his or her marriage to a federal employee was dissolved; (2) he or she has not remarried before age 55; (3) he or she was enrolled in an FEHB health benefits plan as a family member at some point in the 18 months preceding the marriage's dissolution; (4) and he or she currently receives or is entitled to a portion of the annuity payable to the federal employee or annuitant. 5 CFR 890.803.

A court must read the agreement as a whole and may not rewrite clear and unambiguous language under the guise of interpretation. *Reed*, 265 Mich App at 144, 147. Accordingly, the trial court erred in holding that this provision was not applicable to this case.

The fifth sentence, which is also disputed, provides: "In the event of a dissolution of marriage, the Prospective Husband shall receive an amount equal to the amount which would enable Prospective Husband to pay the monthly premiums for former spouse coverage with the Federal Employee Health Benefits insurance." The dispute between the parties is over how much money is "an amount equal to the amount which would enable [plaintiff] to pay the monthly premiums" on his insurance. Defendant argues that if she pays plaintiff a nominal sum, he would be eligible for health benefits insurance under FEHB, thus making it possible to pay his premiums, i.e., giving him the opportunity. Plaintiff argues that defendant must pay him an amount of money equal to the cost of his monthly premiums, which would empower him, make it able for him to pay his monthly premiums without using his own monies.

If this Court were to apply defendant's interpretation, sentence two of paragraph 14 would essentially be surplusage or nugatory, an eventuality to be avoided. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). "Enable" means to "make able; authorize or empower" or "to make possible or easy." *Random House Webster's College Dictionary* (1997). Thus, under sentence five, in order for it to have its own meaning, plaintiff must receive an amount equal to whatever his monthly insurance premium is.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael J. Kelly