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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2013**

In re the Marriage of:
Nancy Ruth Cates, petitioner,
Appellant,

vs.

Mark Dean Cates,
Respondent.

**Filed July 22, 2013
Affirmed
Toussaint, Judge***

Rice County District Court
File No. 66-FA-10-1879

Denis E. Grande, Susan A. Daudelin, Mackall, Crounse & Moore, PLC, Minneapolis,
Minnesota (for appellant)

Jonathan S. Braden, Faribault, Minnesota (for respondent)

Considered and decided by Smith, Presiding Judge; Chutich, Judge; and
Toussaint, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

TOUSSAINT, Judge

In this action to enforce a marital-dissolution judgment's property division, appellant argues that the district court abused its discretion by refusing to amend the Qualified Domestic Relations Order (QDRO) dividing respondent's pension, or, in the alternative, to amend the property division or to order respondent to pay permanent maintenance. We affirm.

DECISION

Appellant Nancy Cates argues that the district court abused its discretion by refusing to amend the QDRO awarding her a portion of respondent Mark Cates' pension. Appellant contends that the parties understood that she would receive \$3,300.00 per month after respondent, her former husband, retired, but this amount was reduced by the pension plan administrator because of her age and respondent's early retirement to \$2,087.73 per month, the actuarial equivalent of a \$3,300.00 per month benefit when those factors are considered.

Divisions of marital property in dissolution actions are final, subject only to the same standards required to reopen a judgment. Minn. Stat. § 518A.39, subd. 2(f) (2012) (finality of property division); Minn. Stat. § 518.145, subd. 2 (2012) (listing possible bases for reopening judgment). Appellant does not assert one of the statutory bases for reopening judgment; rather, she argues that "the district court may, in its discretion, issue an order that implements or enforces specific provisions of the judgment and decree as long as the order does not alter the terms of the original judgment and decree or affect the

parties' substantive rights." We review the district court's order clarifying its original judgment for an abuse of discretion. *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011).

A stipulated dissolution judgment is a contract. *Id.* at 872. We interpret contract language according to its plain and ordinary meaning; rules of construction apply only when the contract is ambiguous. *Id.* "Contract language is ambiguous if it is reasonably susceptible to more than one interpretation." *Id.* (quotation omitted). An appellate court reviews the question of whether a contract is ambiguous de novo. *Id.*

The question here involves interpretation of the phrase "[Appellant] is awarded a portion of [respondent's] New York Life Insurance Agents Pension Plan, which shall produce a benefit of \$3,300.00 per month as of the date of entry [of the] Judgment and Decree." Appellant contends that the clear language of this paragraph provides her with \$3,300.00 in cash per month. Respondent argues that this language means appellant receives the actuarial equivalent of a benefit of \$3,300.00 if it were paid to him.

Because both parties have presented a reasonable interpretation of the contract language, we conclude that it is ambiguous. The ambiguity centers on the word "benefit"; appellant believes this means she should receive \$3,300.00 per month in cash; respondent argues that "benefit" is the starting place from which to make adjustments to value.

We can consider extrinsic evidence to ascertain the meaning of an ambiguous contract. *Id.* Here, appellant relied on a printed statement that, as of October 1, 2010, respondent was entitled to a pension benefit of \$6,600.00 if he retired on October 1,

2010; she was to receive temporary maintenance of \$3,000.00 per month until age 62; the parties contemplated that respondent would retire before age 65; appellant assumed that receiving half of the accrued \$6,600.00 benefit would result in a \$3,300.00 monthly payment to her, roughly equivalent to the temporary maintenance. The parties agreed that there would be no maintenance paid after appellant turned 62, or after she started to receive pension payments. Appellant also agreed that she would not be entitled to any increase in pension due to husband's continuing employment, or cost-of-living increases or subsidies. Generally, the parties' marital-property division reflects an equal division of assets, with appellant receiving more liquid assets.

On the other hand, the dissolution judgment is silent about the effect of respondent's early retirement. The parties used the language "a benefit of \$3,300.00 per month," rather than a "payment of \$3,300.00 per month," or a designation of a percentage of the pension benefit. See *Johnson v. Johnson*, 627 N.W.2d 359, 361 (Minn. App. 2001), review denied (Minn. Aug. 15, 2001) (construing award of one-half of 30/34ths of a pension). The parties agreed that the pension would not be split equally: respondent would have the benefit of any value added after the valuation date of December 31, 2010, and respondent continued to work after this date.

In *Johnson*, this court affirmed the district court's interpretation of its earlier property division order. *Id.* at 364. The wife in that matter was awarded one-half of 30/34ths of husband's government pension. *Id.* at 361. Husband subsequently remarried and elected survivor benefits for his new wife, which reduced both parties' benefit payments. *Id.* Husband's second wife died and the payments reverted to the earlier

figure, but then husband married for the third time. *Id.* Once again, husband elected survivor benefits for his new wife and the original wife's pension payment fell. *Id.* The district court refused to amend the judgment or interpret it to award wife one-half of 30/34ths of husband's pension exclusive of reductions for subsequent spouses. *Id.* at 361-62. This court affirmed, noting that

[t]he substantive rights of the parties remain unchanged Appellant was entitled to receive one-half of 30/34ths of respondent's pension benefit each month. The language of the amended decree establishing that right does not restrict respondent's right to make subsequent pension elections. The amended decree was silent on this issue. While appellant could have requested in 1986 that the district court restrict respondent's right to elect survivor's benefits for future spouses, there is no indication of in the record that such a request was made.

Id. at 363. Here, the parties could have specified payment of a certain amount or a certain percentage of the pension, but instead, they agreed to a "benefit" based on husband's assumed benefit had he retired October 1, 2010.

We give great weight to a district court's interpretation of its own decree. *Id.* The district court found that the payment of \$2,087.00 "accurately reflects the agreement of the parties," noting that this amount is based on respondent's \$3,300.00 accrued benefit, "reduced to take into account both early commencement [of retirement] . . . and the age and life expectancy" of wife. Appellant's substantive rights are unchanged; her payout is based on the actuarial equivalent of a \$3,300.00 benefit. We conclude that the district court's order refusing to amend the QDRO was not an abuse of discretion. *See Nelson*, 806 N.W.2d at 873-74.

Appellant's alternate request for permanent maintenance is barred by her agreement to waive maintenance. See Minn. Stat. § 518.552, subd. 5 (2012) (permitting parties to limit modification of maintenance awards upon certain conditions); *see also Karon v. Karon*, 435 N.W.2d 501, 503 (Minn. 1989). Appellant offers a third alternative of transfer to her of an existing life insurance policy that would generate enough income to make up the difference between the actual and anticipated payouts, but this would require reopening the property division, which is final. Minn. Stat. § 518A.39, subd. 2(f). The district court's rejection of these alternatives was not an abuse of discretion.

Affirmed.