



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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September 27, 2016

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Re: *Stanley C. Rinehart vs. Judith L. Rinehart*, Case No. CL-2016-7518

Dear Counsel:

This matter is before the Court on defendant's Motion for Entry of a Court Order Acceptable for Processing ("COAP"). The proposed COAP states that the Wife shall be paid fifty-percent of the Husband's "self-only annuity," namely, the "recurring unreduced payments under CSRS or FERS to a retiree with no survivor annuity payable to anyone."¹ Plaintiff contends defendant is only "entitled" to fifty-percent of his retirement benefit reduced by the deductions he elected to take post-retirement.² For the reasons that follow, the motion for entry of the wife's proposed COAP is denied.

¹ § 5 CFR 838.103

² Plaintiff's gross monthly annuity takes into account the cost of the survivor annuity for his current spouse and is reduced by the deductions taken for health benefits and federal income tax withholdings.

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The plaintiff, Stanley R. Rinehart ("Husband"), and the defendant, Judith L. Bradshaw ("Wife"), were married in 1967. The parties separated in 1982. On August 19, 1983, the parties signed a Separation and Property Settlement Agreement ("SPSA") and a divorce decree resolving a number of financial issues, including the division of property, spousal support, and child support, was entered in November 1983. It incorporated the SPSA which states in paragraph X:

Husband agrees that Wife is entitled to fifty-percent of the retirement benefits he will receive from the federal government, if received. If Husband fails to qualify for a federal pension due to a change in the laws governing such pensions Wife shall have no claim against him for any benefits. Wife shall not be entitled to any benefits either lump-sum or monthly until received by Husband.

It is this provision the construction of which is in dispute.

Pursuant to Code Section 20-107.3(K), the Court is authorized to make additional orders necessary to effectuate and enforce a divorce order, for the purpose of establishing a court order acceptable for processing "so as to effectuate the expressed intent of the order." Turner v. Turner, 47 Va. App. 76 (2005), Williams v. Williams, 32 Va. App. 72 (2000). Under well-established legal principles, intent is a question to be determined by the fact finder. Cirrito v. Cirrito, 44 VA. App. 287, 305 (2004). The question for the court is what the parties agreed to as evidenced by their contract. "The guiding light in the construction of a contract is the intention of the parties as expressed by them in the words they have used, and courts are bound to say that the parties intended what the written instrument plainly declares." Wilson v. Holyfield, 227 Va. 184, 187 (Va. 1984).³

Property settlement agreements are contracts; therefore, in determining the parties' intent, the court applies the same rules of interpretation applicable to contracts generally. See generally Wells v. Weston, 229 Va. 72, 326 S.E.2d 672

³ On August 18, 2016, argument on the issue was heard and the court determined that parol evidence would not be admitted to construe the disputed contract provision. See Plunkett v. Plunkett, 271 Va. 162 (2006) ("Contracts are construed as written, without adding terms that were not included by the parties. Where the terms in a contract are clear and unambiguous, the contract is construed according to its plain meaning. A contract is not ambiguous merely because the parties disagree as to the meaning of the terms used."). Applying the plain meaning rule to the construction of paragraph X of the parties' Separation and Property Settlement Agreement, the court found that the defendant was entitled to entry of a COAP for fifty-percent of the federal retirement benefits and directed the parties to brief the remaining issue, namely, whether the defendant is entitled to fifty-percent of the plaintiff's "self-only annuity," "gross annuity," or "net annuity."

(1985); Paul v. Paul, 214 Va. 651, 203 S.E.2d 123 (1974). Therefore, the rules of interpretation for contracts in general apply. *Id.*

Under those rules, “when the terms of a disputed provision are clear and definite, it is axiomatic that they are to be applied according to their ordinary meaning.” Smith v. Smith, 3 Va. App. 510, 351 S.E.2d 593 (1986) Virginia. Amos v. Coffey, 228 Va. 88, 320 S.E.2d 335 (1984) (In Virginia, in construing the terms of a contract or conveyance, the courts adhere to the “plain meaning” rule and words used by the parties are normally given their usual, ordinary and popular meaning.); Winn v. Aleda Constr. Co., 227 Va. 304, 315 S.E.2d 193 (1984); Douglas v. Hammett, 28 Va. App. 517, 507 S.E.2d 98 (1998).

Moreover, in seeking the true interpretation of the language used, “the subject matter of the contract, the general purpose and object of the contracting parties, or of the testator, shown by the instrument itself, has always been considered a just foundation for giving the words of an instrument an interpretation, when considered relatively, different from that which they would receive in the abstract. Brown v. Brown's Adm'r, 72 Va. 502, 507 (Va. 1879). Stated differently, in applying the rules of contract interpretation, consideration is given to “not the words merely in which the provisions are expressed but their object and purpose, as disclosed by the language, by the subject matter, the condition and situation of the parties, are to be considered. Carpenter v. Gate City, 185 Va. 734, 40 S.E.2d 268 (1946).

Applying these principles, I conclude the language used in the disputed SPSA provision does not support defendant's contention that that she is entitled to 50% of plaintiff's unreduced retirement benefit, defined as his “self-only benefit.” First, the provision does not include the term, “self-only retirement benefit.” Nor is the term, “retirement benefit,” as used in the SPSA, modified or specifically defined as “unreduced by deductions” or by any other terms or words from which it may reasonably be concluded that defendant's interpretation of the provision is correct.

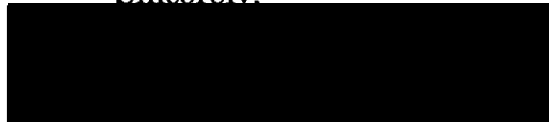
In addition, the construction advanced by defendant ignores other terms used in the disputed SPSA provision that give meaning to the intention of the parties, to wit, the words “receipt,” “until received,” and “entitled.” In interpreting a written contract, every part of the writing must be made, if possible, to take effect, and every word of it must be made to operate in some shape or other. First Am. Title Ins. Co. v. Seaboard Sav. & Loan Ass'n, 227 Va. 379, 315 S.E.2d 842 (1984). Contract language is read so as to give meaning to all the words; a court will not regard any language as meaningless, unless compelled to do so. Paramount Termite Control Co. v. Rector, 238 Va. 171, 380 S.E.2d 922 (1989).

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Giving the words their ordinary meaning, the word, "receipt," is defined in the dictionary as: "to come into possession of." Webster's online dictionary, at <http://www.merriam-webster.com/dictionary/receive>. The word, "entitle," is defined as "to give title to." Webster's online dictionary, at <http://www.merriam-webster.com/dictionary/title>. The full definition part of the page defines "entitle" as "all elements constituting legal ownership." Using these definitions establishes that defendant's legal ownership (entitlement to) of the plaintiff's retirement benefit does not arise "until" and "if" she comes "into possession of the benefit. In other words, the plain meaning of the parties' agreement is that defendant is only "entitled" to fifty-percent of what is "received" by plaintiff which, in this case, is reduced by the deduction he is permitted to take post-retirement.⁴ In short, the plain meaning of the parties' agreement is that defendant has a legal right to fifty percent of the part of the pension that comes into plaintiff's possession of, i.e., that he has actually received. The defendant's Motion for Entry of a Court Order Acceptable for Processing ("COAP") is accordingly denied.

Counsel for Mr. Rinehart is asked to prepare an Order for entry in the Fairfax Circuit Court, reflecting the decision in this matter. If a COAP is to be entered in this case, counsel for Ms. Bradshaw is asked to prepare a revised COAP for entry in the Fairfax Circuit Court, consistent with the decision in this case.

Sincerely,



OR The Hon. Rosemarie Annunziata (ret.)
Judge designate

⁴ It is well-established that a retiree from the federal government is afforded options under the relevant statutes and regulations that, if the retiree elects to carry over to retirement, would reduce the retirement benefit he was to receive. See, *Your annuity is determined by the system you are in – CSRS or FERS Annuity Calculator | FERS Retirement Annuity Benefits*. <http://www.federalretirement.net/annuity.htm> Federal Employee's Retirement Annuities CSRS and FERS Calculations. (*Your annuity is determined by the system you are in – CSRS or FERS Annuity Calculator | FERS Retirement Annuity Benefits, years of service, unused sick leave for both CSRS and FERS employees, survivor annuity election, and the benefits you elect to carry over to retirement. All FERS and some CSRS retirees are also eligible to collect a social security benefit. Review the Benefits page for detailed Social Security and benefits information. Thrift the Plan participants can also add additional income through various withdrawal options.*) For example, 5 U.S.C. § 8906 (2016) provides for an employee to continue receiving federal employee health benefits after retirement. Pursuant to 5 U.S.C. §§ 8339 and 8341 (2016), survivor annuities may also be paid out of an employee's annuity.

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