[Cite as *Kmet v. Kmet,* 2019-Ohio-2443.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ANN MARIE KMET, :

Plaintiff-Appellee, :

No. 107759

v. :

EDWARD PETER KMET, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: June 20, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-15-358333

Appearances:

Heather R. Johnston, *for appellee*.

Robert C. Aldridge, *for appellant*.

LARRY A. JONES, SR., J.:

{¶ 1} Defendant-appellant Edward Peter Kmet ("Husband") appeals from the trial court's September 27, 2018 judgment entry, in which the trial court overruled his objections to the magistrate's April 2018 decision, and adopted the

decision without modification. For the reasons that follow, we reverse and remand for further proceedings.

Factual and Procedural History

{¶ 2} This is a divorce case, wherein Husband and plaintiff-appellee Ann Marie Kmet ("Wife") were divorced in September 2016. The parties executed a separation agreement that was adopted by the trial court and incorporated into the judgment entry of divorce. Husband has a Thrift Savings Plan ("TSP") that is a pension account. It was undisputed at the trial-court level, and is here, that some of the contributions Husband made to the account were made prior to the parties' marriage. At issue is the value of the premarital contribution.

{¶ 3} In the separation agreement, the parties agreed that $28,328.29 of the value of the account was premarital. They further agreed that each would have a one-half interest in the remaining marital balance of the account. At the hearing where the parties placed the terms of their separation agreement on the record, *Wife's counsel* stated that $28,328.29 of the account was premarital and belonged to Husband. The magistrate asked counsel, "so after *that amount* [is] deducted each party will each have a 50% interest in the remaining balance?" (Emphasis added.) Wife's counsel indicated that was correct.

{¶ 4} In the judgment entry of divorce, the trial court incorporated the parties' separation agreement into its judgment and ordered the parties to prepare and submit any qualified domestic relations order ("QDRO") that would be "necessary to implement the orders herein."

{¶ 5} In May 2017, Wife filed a motion to show cause, contending that Husband refused to sign the QDRO that had been prepared for his TSP. Wife also informed the court in the motion that the date of the parties' marriage was incorrect in the divorce judgment entry and the QDRO for the TSP. Specifically, the date listed in those two documents was September 25, 1996, when the correct date of the marriage was September 26, 1995. Wife contended in the motion that "the TSP was prepared using the incorrect date of marriage of September 26, 1996. Both parties provided an incorrect date of marriage."

{¶ 6} In July 2017, the parties filed an agreed judgment entry, in which they, in relevant part, agreed to amend the date of marriage in the divorce judgment entry to reflect the correct date of September 26, 1995. They further agreed to instruct "Pension Evaluators to re-evaluate the *marital* portion" of the TSP using the dates of September 26, 1995 to August 6, 2016, which was the date of termination for marital benefits. (Emphasis added.) The amended separation agreement again stated that the parties agreed that $28,328.29 was Husband's premarital interest in the account.

{¶ 7} On August 9, 2017, an amended judgment entry of divorce was filed. The amended divorce decree reflected the correct marriage date of September 26, 1995. The amended entry also added language to reflect that the dates used to define the *marital* portion of Husband's TSP would be September 26, 1995 through August 6, 2016. The entry stated, as the parties had agreed, that a QDRO for Husband's TSP would be executed.

{¶ 8} In November 2017, Wife filed a motion to show cause on the ground that Husband refused to sign the amended QDRO for his TSP. Wife also filed a motion for attorney fees. In March 2018, a magistrate of the court conducted a hearing on the motions. At the hearing, Husband's counsel contended the premarital interest in the TSP was fixed at $28,328.29, "even if that amount is not exactly what the premarital interest was, it is still the amount that the parties agreed upon, and it is in the court order."

{¶ 9} Husband testified at the hearing that the value of premarital interest on the TSP was negotiated by the parties with counsel, and without the benefit of any input from pension evaluator professionals. Wife testified that it was her understanding that, because of the amended dates, the evaluators would consider the entire TSP, including the premarital value of the account. She testified that she was not sure why the $28,328.29 figure remained in the amended separation agreement, however.

{¶ 10} The magistrate issued a decision in April 2018, finding that Wife demonstrated by clear and convincing evidence that Husband violated the court's prior order. Specifically, the magistrate found that the $28,328.29 figure was affected by the corrected dates and therefore should be disregarded; "a new calculation must be made in connection with the proper date of marriage." The magistrate therefore found Wife's motion for attorney fees well taken. Husband filed objections to the magistrate's decision. The trial court overruled the objections,

however, and adopted the magistrate's decision. Husband now appeals, asserting the following two assignments of error:

> I. The trial court erred in disregarding the agreed-upon premarital interest amount in Appellant's Thrift Savings Plan account which was stated in the original Judgment Entry of Divorce and reiterated in the Amended Judgment Entry of Divorce.
>
> II. The court erred in finding Defendant in contempt for his failure to execute an Order that he had a good faith belief was incorrect until further interpretation by the Court.

Law and Analysis

{¶ 11} Both of Husband's assignments of error involve the trial court's adoption of the magistrate's decision. We review a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Kapadia v. Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255, ¶ 7. Under the abuse-of-discretion standard, we will not disturb the trial court's decision unless it is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). We consider the assignments of error together under this standard of review.

{¶ 12} The essential issue in this appeal is whether the parties agreed that $28,328.29 of the value of Husband's TSP was his separate, premarital property. For the reasons explained below, we find that they did.

{¶ 13} In interpreting a divorce decree that incorporates the parties' separation agreement, the normal rules of contract interpretation generally apply to ascertain the meaning of any ambiguous language. *Keeley v. Keeley*, 12th Dist.

Clermont No. CA-97-02-013, 1997 Ohio App. LEXIS 3139 (July 21, 1997), citing *Scott v. Scott*, 6th Dist. Lucas No. L-93-251, 1994 Ohio App. LEXIS 1776 (Apr. 29, 1994). Because the interpretation of a written contract is a question of law, an appellate court reviews de novo a trial court's interpretation of the parties' separation agreement as incorporated into the divorce decree. *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 313, 667 N.E.2d 949 (1996).

{¶ 14} When construing contract language, the principal goal is to effectuate the parties' intent. *Skivolocki v. E. Ohio Gas Co.*, 38 Ohio St.2d 244, 313 N.E.2d 374 (1974), syllabus. A court will presume that the parties' intent resides in the language employed in the written document. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 509 N.E.2d 411 (1987), paragraph one of syllabus. Thus, a court will give common words appearing in a written instrument their ordinary meaning, unless manifest absurdity results or unless some other meaning is clearly evidenced from the instrument. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph two of syllabus.

{¶ 15} Here, both the original separation agreement and the amended separation agreement stated that "Husband has a Thrift Savings Plan * * * of which $28,328.29 * * * is premarital." At the first hearing relevant to this appeal, wherein the terms of the separation agreement were placed on the record, Wife's counsel informed the court $28,328.29 was premarital and belonged to Husband. Wife's attorney agreed to the magistrate's summation that "after that amount [is] deducted each party will have a 50% interest in the remaining balance."

{¶ 16} Further, in the parties' July 2017 agreed judgment entry that they executed after they realized the original documentation contained the wrong marriage date, they agreed

> to instruct Pension Evaluators to re-evaluate the *marital* portion of [Husband's] (TSP) Thrift Savings Plan using the dates of September 26, 1995 (date of marriage) to August 6, 2016 (termination of marital benefits). Both parties shall be attributed one-half of the marital portion including any gains or losses until the date of distribution.

(Emphasis added.)

{¶ 17} The court's amended divorce judgment entry likewise only referred to the marital value of the TSP: "the dates to be used to define the *marital* portions of * * * [Husband's TSP] are * * * September 26, 1995 through August 6, 2016." (Emphasis added.)

{¶ 18} In addition to the clear and unambiguous language used in the parties' agreement and the court's judgment, we find Husband's argument is buttressed by his testimony at the contempt hearing, as compared to Wife's testimony. Wife was not sure why the disputed figure remained in the amended document, while Husband was sure, that being, because that is what the parties had agreed on.

{¶ 19} We also find Husband's position is buttressed by the fact that, regarding another account (Husband's Federal Employees Retirement System pension account), that was also subject to a QDRO, the parties agreed that a portion of it was premarital but no figure as to the premarital value was placed in their separation agreement.

{¶ 20} In light of the above, given the plain language of the separation agreement, along with the attendant circumstances, the parties agreed that $28,328.29 of Husband's TSP account was his premarital separate property. The trial court therefore abused its discretion in overruling Husband's objections and adopting the magistrate's decision. The first assignment of error is sustained.

{¶ 21} When the terms of a separation agreement are unambiguous, a trial court may not clarify or interpret those terms. *Adkins v. Bush*, 12th Dist. Butler No CA2002-05-131, 2003-Ohio-2781, ¶ 27, citing *In the Matter of Leonhart v. Nees*, 6th Dist. Erie No. E-93-03, 1993 Ohio App. LEXIS 3998 (Aug. 20, 1993) (where contract language is not ambiguous, trial court need not interpret it other than to give effect to its plain language); Sowald & Morganstern, *Domestic Relations Law* (2002) 438, Section 9:48 ("the court may not construe, clarify, nor interpret language which is not ambiguous").

{¶ 22} Contempt of court consists of an act or omission substantially disrupting the judicial process in a particular case. Contempt may include disobedience of a judicial order. *In re Davis*, 77 Ohio App.3d 257, 602 N.E.2d 270 (2d Dist.1991). Because the professional pension evaluators evaluated the premarital portion of Husband's TSP when the parties had already agreed on that amount (and arrived at a different amount than the parties agreed on) Husband should not have been held in contempt for his failure to sign the QDRO. *See generally Tarbert v. Tarbert*, 2d Dist. Clark No. 96-CA-0036, 1996 Ohio App. LEXIS 4328 (Sept. 27, 1996). The second assignment of error is therefore sustained.

{¶ 23} Judgment reversed; case remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

PATRICIA ANN BLACKMON, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR