

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>SC,</b>		:	<b>NO. 07-20,839</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	
		:	
<b>KC,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of **December, 2010**, this order is entered after a hearing held on November 9, 2010, in regards to the Petition for Special Relief filed by Wife November 5, 2010 as well as the Motion to Interpret Antinuptial Agreement filed by Husband on November 30, 2010.

The basis for the relief requested in both filings rest upon the Antinuptial Agreement (hereinafter “Agreement”) the parties entered into on December 26, 2002. Wife’s Petition requests the Court to determine whether, according to the Agreement, Wife is entitled to fifty percent of Husband’s accrued annual leave, accrued sick, and accrued vacation/personal pay that he will receive upon his retirement. Husband’s motion requests the Court to determine the portion of Husband’s pension that is subject to being divided. Husband alleges the Agreement is vague as to the portion of the pension that is to be divided.

At issue is paragraphs 5B(3) and 5C of the Agreement. Paragraph 5B(3) states, in pertinent part, “The pensions of the parties shall be divided equally.” Paragraph 5B(3) goes on to explain “This provision may be accomplished in numerous ways depending upon whether the parties can agree upon the manner of the division. If the pensions of the parties are in pay

status, and the parties do not elect a lump sum distribution, then Husband shall prepare a Qualified Domestic Relations Order for his pension and Wife shall prepare a Qualified Domestic Relations Order for her pension to divide the benefits from this pension equally...” The Agreement does not explain what shall happen in the event that the parties do elect a lump sum distribution.

Husband argues that the Paragraph 5B(3) of the Agreement is ambiguous because it does not clarify what portion of the pension shall be divided equally between the parties, citing that besides its increase in value, Husband’s pension plan is non-marital property.

The fact that the explanatory portion of Paragraph 5B(3) explicitly contemplates what shall happen in the event that the parties do not elect a lump-sum payment but does not explicitly contemplate what shall happen in the event that the parties do elect a lump-sum distribution, however, does not make this Agreement vague or ambiguous. Clearly, the Agreement mandates that the parties’ respective retirements are to be equally split between them, whether the divorce code defines either parties’ pension as marital property or not.

Paragraph 5C of the Agreement states, “Until the time that a divorce is granted and the pensions go into pay status in accordance with the above, Husband shall pay Wife ½ of the difference between the parties actual net incomes. This payment shall be considered in lieu of alimony pendente lite, spousal support or other such benefit.”

Once Husband elects to retire, he will be entitled to receive his accrued annual leave, accrued sick and accrued vacation/personal pay. Wife argues that the accrued annual leave and sick time that Husband will receive upon his retirement is income and, therefore, should be divided between the parties pursuant to Paragraph 5(c) of the Agreement. Husband argues that

the accrued annual leave and sick time that Husband will receive is not income and is, therefore, not subject to Paragraph 5(c) of the Agreement. Husband alternatively argues that if it is considered income, that Paragraph 5(c) would not apply as at the time the money would be received, his pension would be in pay status and, therefore, Paragraph 5(c) is no longer applicable.

The Court finds that accrued annual leave and sick time that Husband is entitled to receive upon his retirement is income to Husband. The amount Husband receives will be includable in Husband's W-2 wages. Clearly, it is a benefit that Husband receives as a result of working and would have otherwise received as pay when he took sick time or leave from work. The fact that Husband is paid a lump sum for the amount owed due to his leaving employment does not change the nature of the benefit he is receiving from income to something other than income. Further, the fact that there may be some delay from the date Husband retires and the date he receives the payment of his accrued benefits as of retirement do not change the money he is receiving to something other than income.

Although copious testimony was presented by Husband and Wife, the Court need look no further than, nor would it be proper to look further than, the parties Agreement itself to resolve the parties' disputes. Clearly, according to the agreement Wife is entitled to one-half of Husband's pension whether or not he elects a lump-sum distribution. That is what the parties contracted to in Paragraph 5B(3) of their Agreement.

The rules for the interpretation of contracts are well-established under Pennsylvania law and apply to marital property settlement agreements. First, the Court must give plain meaning to a clear and unambiguous contract provision unless doing so would be contrary to a clearly

expressed public policy. Prudential Prop. & Cas. Ins. Co. v. Colbert, 572 Pa. 82, 87 (Pa. 2002). The intent of the parties to a written contract is to be regarded as being embodied within the writing itself; furthermore, when the words are clear and unambiguous, the intent is to be discovered only from the express language of the agreement. Willison v. Consolidation Coal Co., 536 Pa. 49, 54 (Pa. 1994). This concept emphasizes just how narrow the court's role is as interpreter of a contract: "Courts in interpreting a contract do not assume that its language was chosen carelessly." Stewart, 498 Pa. at 51, 444 A.2d at 662 (quoting Moore v. Stevens Coal Co., 315 Pa. 564, 568, 173 A. 661, 662 (1934)). Furthermore, it is not the function of the court to rewrite the parties own contract, "or give it a construction in conflict with the accepted and plain meaning of the language used." Hagarty v. Williams Akers, Jr. Co., 342 Pa. 236, 20 A.2d 317 (1941).

If a contract is ambiguous, the general rule for interpretation of that contract states that it is the "court's duty when construing a contract to determine the intent of the parties to the contract. Lower Frederick Township v. Clemmer, 518 Pa. 313, 543 A.2d 502 (1988); Walton v. Philadelphia National Bank, 376 Pa.Super. 329, 545 A.2d 1383 (1988). "A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Walton, 376 Pa.Super. at 341, 545 A.2d at 1389. See also, Hutchison v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986). When the meaning of a contract is not clear and is ambiguous, then it may be appropriate to look outside the four corners of the writing to determine the parties' intent. Z & L Lumber Company of Atlasburg v. Nordquist, 348 Pa.Super. 580, 502 A.2d 697 (1985); Metzger v. Clifford Realty Corp., 327 Pa.Super. 377, 476 A.2d 1 (1984). See also Burns Manufacturing Company, Inc. v.

Boehm, 467 Pa. 307, 313, n.3, 356 A.2d 763, 766, n.3 (1976); United Refining Company v. Jenkins, 410 Pa. 126, 189 A.2d 574 (1963). However, the court must stay focused and look to the express language of the contract to ascertain the contract's intent or whether within the contract there are ambiguities. Rusiski v. Pribonic, 511 Pa. 383, 515 A.2d 507 (1986); Steuart v. McChesney, 498 Pa. 45, 444 A.2d 659 (1982).

It is therefore ORDERED and DIRECTED as follows:

1. Wife shall receive one-half of the value of Husband's pension.
2. Any accrued annual leave, sick time or vacation pay received by Husband shall be divided pursuant to Paragraph 5(c) of the parties' Antenuptial Agreement dated December 26, 2002.

By the Court,

Joy Reynolds McCoy, Judge

JRM/trk