

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Christopher W. Yodzis

Court of Appeals No. L-12-1159

Appellant

Trial Court No. DR 2004-0284

v.

Linda A. Savercool

**DECISION AND JUDGMENT**

Appellee

Decided: November 30, 2012

\* \* \* \* \*

John L. Straub and Rebecca E. Shope, for appellant.

Martin J. Holmes, Sr., for appellee.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant appeals the order of the Lucas County Court of Common Pleas, Domestic Relations Division, construing a separation agreement incorporated into the parties' divorce decree. Because we conclude that the trial court properly found the agreement unambiguous, we affirm.

{¶ 2} Appellant, Christopher W. Yodzis and appellee, Linda A. Yodzis nka Savercool were married in 1984. The couple had four children, the youngest with special needs. The parties divorced in 2004.

{¶ 3} Incorporated into the final divorce decree was a separation agreement between the parties. The agreement settled, inter alia, the disposition of property, child support and spousal support. Citing the parties' incomes in computing the Ohio child support guidelines, the agreement set child support at \$308.84 per month, per child, for a total of \$1,235.36 per month, excluding the processing fee, effective upon the sale of the family home on Pemberton Street. Appellant was to pay the mortgage, insurance, taxes and utilities on the Pemberton property and \$750 biweekly in lieu of child support until the property sold.

{¶ 4} Spousal support, also payable following the sale of the Pemberton property, was to be terminable on the death or remarriage of either party or on August 31, 2013, the anticipated graduation date of the parties' youngest child. Additionally, the agreement states:

The parties intend that the total monthly obligation that Husband shall pay to Wife, as apportioned between child support and spousal support, shall equal the sum of Two Thousand Three Hundred Seventy-five Dollars (\$2,375.00) per month. Presently the child support order is set at One Thousand Two Hundred Thirty-five and 34/100 Dollars (\$1,235.36) [sic], excluding processing fee, which will provide that commencing

initially upon the sale of the residence at 2426 Pemberton, Husband shall pay to Wife the sum of One Thousand One Hundred Thirty-nine and 66/100 Dollars (\$1,139.66) per month as and for spousal support, plus 2% processing fee. In the event of modification of the child support order due to a change of circumstances in the parties' incomes, or emancipation of the parties' children, then the difference in the recalculation of the child support obligation and the spousal support obligation shall continue to total the sum of Two Thousand Three Hundred Seventy-five Dollars (\$2,375.00) per month. \* \* \*

In the event of emancipation of a child or termination of spousal support then child support and spousal support shall be recalculated within 30 days of the event, so that the overall amount of payment to Wife shall remain at the sum of \$2,375.00 per month.

{¶ 5} The Pemberton real property sold on June 20, 2011. By this time appellee was remarried and three of the parties' four children were emancipated. On July 28, 2011, the Lucas County Child Support Enforcement Agency sent appellant notice that it intended to withhold \$2,375 monthly from his income. Upon receipt of this notice, appellant moved the trial court to set aside the withholding order and recalculate child support based on one unemancipated child.

{¶ 6} The matter was submitted to a magistrate, who denied appellant's motion. Appellant's objections to the magistrate's decision were overruled. This appeal followed. Appellant sets forth the following two assignments of error:

I. The trial court abused its discretion by affirming the notice to withhold income for child and spousal support.

II. The trial court abused its discretion by deviating from the child support worksheet without considering R.C. §3119.22 or 3119.23, and absent any supporting evidence from appellee.

{¶ 7} It is well established that decisions concerning child support obligations rest within the sound discretion of the court and will not be disturbed absent an abuse of that discretion. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997). An abuse of discretion is more than a mistake of law or a lapse of judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1149 (1983).

{¶ 8} In this matter, the issue of child support is governed by an agreement of the parties memorialized in a separation agreement which was then incorporated into the divorce decree. Consequently, antecedent to any exercise of discretion, the court must ascertain the import of that agreement.

{¶ 9} A separation agreement is a contract and its interpretation is a matter of law. *Forstner v. Forstner*, 68 Ohio App.3d 367, 372, 588 N.E.2d 285 (11th Dist.1990).

Review of a matter of law is de novo. *Arnott v. Arnott*, 132 Ohio St.3d 401, 2012-Ohio-3208, 972 N.E.2d 586, ¶ 14.

{¶ 10} The cardinal principle in contract interpretation is to give effect to the intent of the parties. *Skivolocki v. E. Ohio Gas Co.*, 38 Ohio St.2d 244, 313 N.E.2d 374 (1974), paragraph one of the syllabus. Such intent is presumed to reside in the language the parties chose to employ in the agreement. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 509 N.E.2d 411 (1987), paragraph one of the syllabus. If the language of the contract is clear and unambiguous, the contract must be enforced as written. *Corl v. Thomas & King*, 10th Dist. No. 05AP-1128, 2006-Ohio-2956, ¶ 26. Ambiguity exists only when the terms of an agreement cannot be determined within the four corners of the contract or where the language of the agreement is susceptible to two or more reasonable interpretations. *United States Fid. & Guar. Co. v. St. Elizabeth Med. Ctr.*, 129 Ohio App.3d 45, 55, 716 N.E.2d 1201 (2d Dist.1998).

{¶ 11} Appellant would have us focus solely on the spousal support section and insists that the use of the word “recalculation” in that section is antithetical to the court’s interpretation of the document. To recalculate, appellant maintains, there must be a current support order in effect. No such order existed at the emancipation of any of the children or the termination of spousal support. Because no formal support order was in place before the sale of the Pemberton property there could be no recalculation and the agreement is inapplicable.

{¶ 12} Despite appellant's valiant effort to deconstruct the separation agreement, its meaning is plain. In three different locations in the document, it is clearly stated that on the sale of the house appellant is to have a total child and spousal support obligation of \$2,375 per month. This amount is to be paid irrespective of whether spousal support is terminated and irrespective of the number of children who have been emancipated. There is simply no other reasonable interpretation of the document at issue.

{¶ 13} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 14} In his second assignment of error, appellant complains that the trial court abused its discretion by deviating from the child support guidelines without any evidence in the record of a change of circumstances.

{¶ 15} Assuming, *arguendo*, that the action of the trial court constitutes a child support modification rather than enforcement of a pre-existing agreement, appellant is in no way prejudiced because he agreed to pay \$2,375 per month after the house sold. Whether this is allocated 100 percent to child support or zero percent to child support, there is no difference in the amount that appellant is contractually obligated to pay.

{¶ 16} We believe that the court here has done nothing more than affirm the enforcement of the 2004 separation agreement as incorporated into the court's divorce decree. But even if we were to conclude otherwise, appellant is unaffected. Absent prejudice, he cannot prevail on appeal. *Smith v. Flesher*, 12 Ohio St.2d 107, 233 N.E.2d 137 (1967), paragraph one of the syllabus; App.R. 12(B). Accordingly, appellant's second assignment of error is not well-taken.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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