

RENDERED: SEPTEMBER 6, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0892-MR

PAT F. HALVORSON

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE DEANNA WISE HENSCHEL, JUDGE
ACTION NO. 10-CI-00991

TAMMI HALVORSON

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; A. JONES AND LAMBERT,
JUDGES.

JONES, A., JUDGE: Appellant, Pat Halvorson (Pat), appeals from a judgment of the McCracken Circuit Court which granted a motion for summary judgment in favor of Appellee, Tammi Halvorson (Tammi), and denied his motion to order compliance with the parties' marital settlement agreement. After a careful review of the briefs, the record on appeal, and the relevant law, we vacate and remand for further proceedings consistent with this Opinion.

I. BACKGROUND

Beginning in 1995, Pat received \$13,300 in monthly disability payments through multiple insurance policies with North Western Mutual Life Insurance Company (NWM) because of significant mental health issues. The parties were married on November 26, 1999. Tammi filed a petition for dissolution in 2010, and the parties were divorced by an interlocutory decree entered in early 2011. (Record, (R.) at 2 and 142.)

In Spring 2012, the parties entered into a marital settlement agreement (the Agreement), approved by the circuit court, in which the parties allocated to Pat the residual profits from the parties' jointly owned business entity, Halvorson Investments, LLC (R. at 266-67). Pat was also to pay all the company's future expenses and to assume all its liabilities. Soon thereafter, the parties executed an addendum to the Agreement (the Addendum) on October 30, 2013. The Addendum provided Tammi would instead receive all the residual payments from Halvorson Investments, LLC, pay all expenses, and assume all liabilities subject to the following condition:

(2) This arrangement shall continue [for] so long as the following occurs:

(a) TAMMI shall pay PAT from whatever source she chooses the sum of \$10,000 per month as a non-compete agreement, subject to annual increases on the anniversary date of March 1st of each year, with said annual increases to be based on a Consumer Price

Index. The \$10,000 per month payments for this non-compete shall be due and payable during the life of PAT.

(b) This arrangement shall furthermore be subject to PAT continuing to receive his full disability benefits from North Western Mutual Life Insurance Company. In the event North Western Mutual Life Insurance Company would reduce PAT's disability benefits at any point in time, then at that point this arrangement shall terminate, and from that point forward the parties shall be subject to the original arrangements as set out in Section 10 of their Marital Settlement Agreement of March 6, 2012.

(R. at 272-73.) The parties followed the terms of the Addendum for the next eight and a half years.

In May 2022, Pat filed a motion requesting the circuit court adopt the Addendum and order compliance with Section 2(b), namely that Tammi begin paying Pat the residual profits from Halvorson Investments, LLC pursuant to Section 10 of the original Agreement. Pat stated his \$13,300 in monthly disability payments through NWM were reduced by \$800 in February 2020 and reduced again by \$500 in March 2022, each time pursuant to the terms of the NWM policy contracts because of Pat's turning 65 years old. The circuit court set a hearing on Pat's motion to order compliance. (R. at 472.)

Before the hearing, Tammi filed a motion for summary judgment, arguing that the reductions to Pat's disability benefits were contemplated at the time the parties entered the Addendum. Therefore, according to Tammi, Pat was

still receiving “full” disability payments from NWM, as NWM did not take any affirmative action in reducing Pat’s benefits. Rather, the reduction in the benefits merely resulted from the passing of time and Pat’s attaining 65 years of age.

Tammi’s motion included an affidavit from her counsel, stating that, while he was not legally advising Tammi at the time the Addendum was signed, he believed the Addendum was executed because of concerns that Pat would lose his NWM disability payments due to his receiving income from Halvorson Investments, LLC per the terms of the Agreement. (R. at 532.) Pat filed a response, arguing there were several disputed material facts concerning the intention of the parties leading up to the entry of the Addendum. (R. at 581.)

The circuit court took Tammi’s motion under submission and subsequently entered an order granting the summary judgment and denying Pat’s motion to compel. The order was entered before the hearing scheduled for Pat’s motion. Pat filed a motion to alter, amend, or vacate which was also denied. The instant appeal followed.

II. STANDARD OF REVIEW

“The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres*

v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing CR¹ 56.03). “Whether summary judgment is appropriate is a legal question involving no factual findings, so a trial court’s grant of summary judgment is reviewed *de novo*.” *Brown v. Griffin*, 505 S.W.3d 777, 781 (Ky. App. 2016) (citing *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366, 370-71 (Ky. 2010)).

Similarly, [t]he interpretation of a contract, including determining whether a contract is ambiguous, is a question of law to be determined *de novo* on appellate review.” *Kentucky Shakespeare Festival, Inc. v. Dunaway*, 490 S.W.3d 691, 695 (Ky. 2016) (citing *Abney v. Nationwide Mutual Insurance Company*, 215 S.W.3d 699, 703 (Ky. 2006)).

III. ANALYSIS

It has long been held that in considering a motion for summary judgment, “[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (citing *Dossett v. New York Mining and Manufacturing Co.*, 451 S.W.2d 843 (Ky. 1970)). Furthermore, granting the motion “is only proper where the movant shows that the adverse party could not prevail under any circumstances.” *Id.* “The moving party bears the initial burden of demonstrating that no genuine issue of

¹ Kentucky Rules of Civil Procedure.

material fact exists and then the burden shifts to the party opposing summary judgment to produce at least some affirmative evidence showing that there is a genuine issue of material fact requiring trial.” *First Fed. Sav. Bank v. McCubbins*, 217 S.W.3d 201, 203 (Ky. 2006) (citations omitted).

“Absent an ambiguity in [a] contract, the parties’ intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002) (citing *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000)); *Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 105-06 (Ky. 2003). “A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations.” *Hazard Coal Corporation v. Knight*, 325 S.W.3d 290, 298 (Ky. 2010) (citation omitted). Furthermore, whether there is an ambiguity “is a material fact about which there is a genuine issue precluding summary judgment.” *Smithfield Farms, LLC v. Riverside Devs., LLC*, 566 S.W.3d 566, 570 (Ky. App. 2018) (citing *Cook United, Inc. v. Waits*, 512 S.W.2d 493, 495 (Ky. 1974)).

In making its ruling below, the circuit court found in relevant part:

Pat states that NWM reduced his disability payment in January 2020 and again in March 2022 and that he is not receiving his “full disability benefits.” Therefore, Pat claims that pursuant to the Addendum, all of the income of [Halvorson Investments, LLC] should be paid to him. Tammi disagrees and argues that the evidence is

undisputed that NWM has taken no action to reduce Pat's disability benefits as required by the Addendum.

The Court finds there are no disputed issues of material fact and the evidence establishes that NWM has not taken any action to reduce Pat's disability benefits. Rather, the changes to Pat's disability benefits have occurred exactly as anticipated at the time the Addendum was signed. The changes to Pat's disability benefits have occurred because of the passage of time and Pat's own actions in applying for Social Security retirement benefits. The testimony of . . . a NWM technical consultant in policy benefits[] on this point is uncontroverted. She testified, and the Court finds, that NWM has not "done" anything and the polic[i]es are continuing to pay exactly as the contractual provisions in the policies require.

(R. at 632.) The circuit court then made specific findings of fact concerning the terms of each of Pat's NWM policies.

The circuit court did not limit itself to construction of the "four corners of the agreement," nor did it view the record in the light most favorable to Pat. Additionally, it did not engage in a plain reading of the Addendum's terms at all. Instead, the circuit court considered parol evidence introduced by Tammi concerning the actions and policies of NWM, then used that extrinsic evidence to discern the parties' intentions at the time the Addendum was entered, and assigned Tammi's interpretation to disputed terms in the Addendum. The evidence the circuit court relied on in granting summary judgment is extrinsic and not appropriate to consider in ruling on a motion for summary judgment. *See* BLACK'S LAW DICTIONARY (12th ed. 2024) (defining *extrinsic evidence* as "[e]vidence

relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement”); *see also Cantrell Supply, Inc.*, 94 S.W.3d at 385.

In this case, there are two options: (1) either the terms of the Addendum are unambiguous, and so consideration of extrinsic evidence is inappropriate; or (2) the terms of the Addendum are ambiguous, and summary judgment is precluded.

The first question which must be answered then is whether the Addendum terms are ambiguous. Conducting a plain reading of the Addendum, we find the term “full” as used in “full disability payments” to have two different, but reasonable, interpretations. In Pat’s favor, “full disability payments” could mean the maximum \$13,300 Pat had received since 1995 and was receiving at the time the Addendum was entered. In Tammi’s favor, “full disability payments” could mean the total disability payments to which Pat was contractually entitled. The plain meaning of “full” includes “containing as much or as many as is possible or normal” or “being at the highest or greatest degree: MAXIMUM.”²

Thus, we find the Addendum to be ambiguous and so summary judgment was inappropriate. *See Smithfield Farms, LLC*, 566 S.W.3d at 570; *see*

² *Full*, MERRIAM-WEBSTER DICTIONARY <https://www.merriam-webster.com/dictionary/full> (last visited Aug. 21, 2024).

also Clair v. Hillenmeyer, 232 S.W.3d 544, 550 (Ky. App. 2007) (“A single issue of material fact, the resolution of which could reasonably change the outcome of the litigation, is sufficient to overcome a motion for summary judgment.”).

IV. CONCLUSION

Accordingly, we hold that the circuit court erred in finding the terms of the Addendum to be unambiguous and granting Tammi’s motion for summary judgment. Thus, we vacate and remand for further proceedings consistent with this Opinion.

ALL CONCUR.

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