RENDERED: MAY 25, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000244-MR

CHRISTIE KREIMBORG — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA KAY CALVERT, JUDGE
ACTION NO. 14-CI-501728

SCOTT KREIMBORG — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, MAZE, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: Christie Kreimborg appeals from multiple orders of the Jefferson Circuit Court, Family Division, regarding a division of assets following her divorce from Scott Kreimborg. The parties dispute whether the family court correctly divided two retirement accounts as marital property as defined by statute, despite terms in the parties' earlier settlement agreement defining "marital portion" as applied to their retirement accounts. After careful consideration, we reverse and

remand for further proceedings.

The underlying facts of this case are largely undisputed. Christie and Scott were married on June 10, 2006, in Jefferson County, Kentucky. Christie filed a petition for dissolution of the marriage in Jefferson Circuit Court, Family Division on June 3, 2014. The parties thereafter engaged in significant litigation surrounding not only care and custody of their two minor children, but also division of their marital property. Christie and Scott were unable to resolve all of their differences through mediation; however, they were able to negotiate a settlement agreement resolving a number of their financial issues. The family court entered this document as an Agreed Order on October 2, 2015. Of relevance to this appeal, paragraph (6) of the Agreed Order states as follows:

> The parties shall equally divide the marital portion of all retirement accounts effective August 31st, 2015. The "marital portion" is that portion accumulated from the date of the parties' marriage until August 31st, 2015.

Prior to his marriage, Scott owned a Wells Fargo 401(k) retirement account. The parties agree this account had a value of $35,017.42 at the time they married. Although not confirmed until later, Scott contributed marital funds to the Wells Fargo account. In the course of the marriage, funds from this account were eventually transferred to two separate T. Rowe Price retirement accounts. On August 31, 2015, the end date specified in the Agreed Order, the parties agree the two accounts had a total value of $79,577.68. The increase in value of the original account over the time period described in the Agreed Order was therefore

$44,560.26. The parties could not agree, however, as to whether the retirement accounts were *entirely or mostly Scott's property*, due to their largely premarital origin, or whether Christie, pursuant to the Agreed Order, could claim an *equal division* of the accounts' increase in value over the course of the marriage.

In its order entered December 8, 2016, the family court quoted paragraph (6) of the parties' Agreed Order in describing Christie's argument. However, the court erroneously asserted no marital funds contributed to the growth of the retirement accounts; the court thus found the entirety of both accounts to be Scott's non-marital asset. Christie subsequently moved the family court to alter, amend, or vacate the judgment under Kentucky Rules of Civil Procedure (CR) 59.05, arguing the plain language of the Agreed Order should be followed and the marital portion should be deemed the total accumulated value for the accounts, from the date of the marriage until August 31, 2015.

The family court entered an amended order on February 3, 2017, in which it considered Christie and Scott's renewed arguments regarding the retirement accounts. Noting the error in the previous order, the court now acknowledged Scott's admission that $11,529.96 in marital funds were contributed to the original Wells Fargo account. However, the court also explicitly rejected Christie's argument that the Agreed Order should control the accounts' disposition. Citing Kentucky Revised Statutes (KRS) 403.190(2), the court found "any portion of the increase in value [of the accounts] that is not a direct result of the parties' contributions or efforts remains [premarital] property." The court continued its

analysis by finding 75.23% of contributions to the accounts were premarital and 24.77% were marital; therefore, the marital portion of the accounts amounted to 24.77% of $79,577.68, or $19,711.39. The court ultimately concluded Christie was entitled to half of this marital portion and awarded her $9,855.70. This appeal follows.

ANALYSIS

This is a divorce case in which the issues before this Court involve interpretation of a property settlement agreement and its relationship to disposition of property under KRS 403.190. "[J]udicial review of a property settlement agreement to determine its meaning is simply a matter of contract interpretation. . . . As such, an appellate court's review of a lower court's interpretation of a property settlement agreement is *de novo.*" *Sadler v. Buskirk*, 478 S.W.3d 379, 382 (Ky. 2015) (citations omitted). "In the absence of ambiguity in the contract, we look only to the words contained within the four corners of the agreement to determine the parties' intentions." *Id*. (Citations omitted).

Here, the family court focused on KRS 403.190(2)(e) to determine the status of the retirement accounts:

> For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except . . . [t]he increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

In its focus upon KRS 403.190, however, the court neglected to consider KRS 403.180 and the impact of the Agreed Order. "KRS 403.180 governs the enforceability of written separation agreements. Property disposition provisions contained in such agreements are binding upon the court unless they are unconscionable." *Davis v. Davis*, 489 S.W.3d 225, 227 (Ky. 2016) (citing KRS 403.180(1) and (2)). Not only are property settlement agreements binding, they also take priority over dispositions of property under KRS 403.190:

> [A] husband and wife in Kentucky may define by agreement their rights in each other's property, regardless of any rights which would otherwise have been excluded or conferred by KRS 403.190. Such agreements, provided they are otherwise valid contracts, are entitled to enforcement upon dissolution of the marriage.

Gentry v. Gentry, 798 S.W.2d 928, 934 (Ky. 1990).

The family court did not explicitly state why it rejected Christie's arguments on the Agreed Order's provision regarding retirement accounts. Scott has not argued the Agreed Order should be considered unconscionable or otherwise invalid. Therefore, our law mandates the Agreed Order should be followed. The only question remaining is whether paragraph (6) of the Agreed Order specifically supersedes disposition of the disputed retirement accounts under KRS 403.190. We conclude it does.

Paragraph (6) of the Agreed Order contains only two lines, the first of which reads, "[t]he parties shall equally divide the marital portion of all retirement accounts effective August 31st, 2015." This line explicitly includes *all* retirement

accounts. It does not exclude premarital retirement accounts. It also requires the "marital portion" to be equally divided. This is particularly significant because the second line of the paragraph defines "marital portion" as "that portion accumulated from the date of the parties' marriage until August 31st, 2015." The provision's reference to the "portion accumulated" is not inherently limited but refers to the overall increase in value of any retirement account. Accumulation may occur as a result of "continuous or repeated additions, . . . profit accruing on sale of principal assets, or increase derived from their investment[.]" *Accumulations*, BLACK'S LAW DICTIONARY (6th ed. 1990).

More importantly, the second line of the Agreed Order provision defining "marital portion" to mean "accumulation" effectively supersedes the definition of "marital property" in KRS 403.190(2), which excludes "[t]he increase in value of property acquired before the marriage." Paragraph (6) of the Agreed Order contains no such exclusion. "[A] husband and wife in Kentucky may define by agreement their rights in each other's property, regardless of . . . KRS 403.190." *Gentry*, 798 S.W.2d at 934. The family court erroneously disposed of the disputed retirement accounts using the statutory definition when the parties' Agreed Order contained a superseding definition.

CONCLUSION

For the foregoing reasons, we reverse and remand the Jefferson Circuit Court, Family Division's orders entered December 8, 2016, and February 3, 2017. Consistent with this opinion, on remand the family court shall order division

of Scott's retirement accounts to reflect the parties' Agreed Order entered October 2, 2015.

ALL CONCUR.

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