

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001944-MR

KAREN MARTIN

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 15-CI-00600

DENNIS MARTIN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; JONES AND L. THOMPSON,  
JUDGES.

JONES, JUDGE: The Appellant, Karen Martin, appeals a post-dissolution decree order of the Laurel Circuit Court denying her motion to amend a Qualified Domestic Relations Order (QDRO). Karen argues the QDRO does not comport with the parties' separation and settlement agreement as incorporated into their dissolution decree. Upon a careful review of the record, we affirm.

## I. BACKGROUND

Karen and Dennis Martin were married on November 28, 1995. On September 2, 2015, Karen and Dennis each filed for dissolution of the marriage in the Laurel Circuit Court, and the court consolidated the two cases by order entered October 19, 2015. At that time, Dennis was not yet eligible to retire, but the parties agreed he had a vested interest in his pension of approximately \$160,000. However, the parties had taken out a loan in the amount of \$40,000 against Dennis's 401K about one year before they separated. The parties agreed on a division of their property, including Dennis's 401K, as reflected in their property settlement agreement ("agreement"). The trial court found the terms of the agreement conscionable and incorporated the agreement in its final decree of dissolution of marriage.

Only the portions of the agreement pertaining to Dennis's retirement account and the debt taken against it are relevant to the issue on appeal. The agreement, drafted by Karen, provides:

[Karen] shall receive one-half (1/2) the value, as of the day the final decree of dissolution of marriage is entered, of [Dennis's] CSX Retirement, Tier one, Tier Two and 401K. A Qualified Domestic Relations Order should be executed.

. . .

[Dennis] shall be responsible for any indebtedness due and owing on a loan taken against his 401K . . . and shall indemnify [Karen] and hold her harmless for repayment of the same.

Karen later filed a post-decree motion for entry of a QDRO regarding Dennis's 401K. Dennis made no objection, and the court entered the QDRO. However, Karen subsequently moved to amend the QDRO, and Dennis objected to the motion. On October 3, 2017, the trial court heard arguments from the parties.

Karen argued the QDRO entered by the trial court did not comply with the terms of the agreement. The plan administrator informed Karen the value of the 401K would be divided as of the date of the decree reduced by the amount of a loan taken against the account. Thus, Karen would be entitled to \$60,000, which was half of the 401K reduced by the amount of the loan. Her position was that the clear and unambiguous language of the agreement provided for division of the value of Dennis's 401K without deducting the amount of the loan, so she was entitled to \$80,000. Karen further argued she made a mistake in drafting the QDRO, and that it required her to pay half of the loan Dennis agreed to pay.

Dennis objected to Karen's motion and argued he understood the agreement, which was prepared by Karen's attorney, to mean Karen would receive half of the current value of his 401K, less the value of the loan. He further argued when he agreed to be responsible for the marital loan and indemnify Karen, he merely intended that he would continue having the monthly payment deducted from his payroll, and Karen would bear no responsibility for the monthly payment. Dennis did not object to the QDRO that was entered because it comported with his

intentions during settlement negotiations with Karen. Although Dennis would eventually repay the full amount of the loan, he argues he did not intend that Karen should benefit from his payments made post-decree.

Following the hearing, the trial court permitted the parties to file memoranda in support of their positions. After considering the parties' arguments, the trial court entered its order denying Karen's motion to amend the QDRO on October 30, 2017. In its order, the trial court noted the parties were clearly aware of the loan and agreed Dennis was responsible for repayment and agreed to indemnify and hold Karen harmless for repayment. The trial court determined the agreement was silent as to whether the value of the 401K would be reduced by the value of the loan before it was divided. The trial court reasoned that had Karen intended the value not be reduced by the loan, she would have drafted the agreement to reflect her intent. The trial court found the pertinent language in the agreement was ambiguous and determined that the value on the date the decree was entered would have been reduced by the value of the loan. This appeal followed.

## **II. STANDARD OF REVIEW**

Although the sole issue on appeal is whether the trial court should have amended the QDRO, we must first determine whether the trial court correctly found an ambiguity in the language of the agreement. "First, judicial 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). Then, our analysis turns to whether the trial court should have granted Karen's motion to amend the QDRO, which we review for abuse of discretion. *Willis v. Willis*, 362 S.W.3d 372, 377 (Ky. App. 2012). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* (quoting *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000)).

### III. ANALYSIS

Karen argues the trial court abused its discretion when it denied her motion to amend the QDRO because its interpretation of the parties' agreement was erroneous. In the order denying the motion to amend the QDRO, the trial court determined the relevant portions of the agreement were ambiguous and construed the ambiguity against Karen because she drafted the agreement. Ultimately, the trial court found that the value of Dennis's 401K on the date the decree was entered was the amount of the 401K less the amount of the loan, which was \$120,000.00.

“A contractual provision is ambiguous if the provision is susceptible to multiple or inconsistent interpretations.” *McMullin v. McMullin*, 338 S.W.3d 315, 320 (Ky. App. 2011) (citations omitted). If an agreement contains an ambiguity, we “gather, if possible, the intention of the parties from the contract as a whole. In determining the intention of the parties, we will consider the subject matter of the contract, the situation of the parties and the conditions under which the contract was written[.]” *Id.* (citations and internal quotation marks omitted). Unambiguous contracts are “strictly enforced as written.” *Id.* (citation omitted).

The agreement clearly entitles Karen one-half of the value of Dennis’s 401K as of the day of the final decree, but it is silent as to what “value” means in this context as noted in the trial court’s order. Karen argues the relevant portions of the contract clearly support her definition of value, so she is entitled to half of the amount of Dennis’s 401K, including the amount of the loan. Conversely, Dennis argues the agreement and the QDRO that was entered support his definition of value, so the value of his 401K should be reduced by the amount of the loan. The agreement is silent as to the intended meaning of the word “value,” and there are two reasonable interpretations of the meaning. “A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

Because the agreement contains an ambiguity, we look to “the body of the contract and the surrounding circumstances” to determine the parties’ intent. *McMullin*, 338 S.W.3d at 320. We disagree with Karen that parties intended for her to receive half of the value of Dennis’s 401K including the amount of the loan. The portion of the agreement regarding vehicles provides some guidance on interpreting the word “value.” The parties agreed that Dennis would be the owner of the parties’ Chevrolet truck “free and clear of any claim or ownership interest by [Karen]. [Dennis] shall pay [Karen] \$4,000.00 representing fifty percent (50%) of the value of the truck. [Dennis] shall be responsible to the indebtedness due and owing on said vehicle to Alley [sic] Bank and shall indemnify the Petitioner of any indebtedness thereon.” The agreement itself does not indicate whether half the value of the truck includes or excludes the amount of the loan owed on the vehicle. However, the parties’ verified disclosure statement indicates that the truck was valued at \$30,000.00, and a debt of approximately ten to fifteen thousand dollars was owed on the truck. Although it is unclear how the parties agreed that \$4,000.00 is half the value of the truck, the record indicates the “value” of the truck was reduced by the amount of the debt owed on the vehicle.

Furthermore, Dennis’s position is supported by the circumstances surrounding entry of the QDRO. After the divorce decree was entered, Karen moved for entry of a QDRO. Dennis did not object, and the trial court entered the

QDRO drafted and tendered by Karen. The QDRO entered by the trial court reflects Dennis's argument that he intended the 401K be reduced by the amount of the loan before division. Thus, the surrounding circumstances support the trial court's interpretation of the agreement.

Additionally, we uphold the trial court's interpretation because the rule of *contra proferentem* applies: ambiguities are "construed against the drafter of a contract when the contract is susceptible of two meanings." *Id.* at 322 (citations omitted). Karen drafted the agreement, so we construe the ambiguity against her. Dennis accepted the contract drafted by Karen, and the QDRO entered by the trial court comports with Dennis's interpretation of the agreement. Thus, the trial court's interpretation was correct; Dennis's 401K must be reduced by the amount of the loan before the asset is divided.

Because we hold the trial court correctly interpreted the contract between the parties, we now address whether the trial court abused its discretion when it failed to grant Karen's motion to amend the QDRO. The trial court's denial of Karen's motion was based on its interpretation of the contract, which we conclude was correct and based on substantial evidence. *See Young v. Young*, 314 S.W.3d 306, 310 (Ky. App. 2010). Thus, we cannot say the trial court abused its discretion when it denied Karen's motion to amend the QDRO.



#### IV. CONCLUSION

For the foregoing reasons, we affirm the order of the Laurel Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Marcia A. Smith  
Corbin, Kentucky

BRIEF FOR APPELLEE:

Brittany N. Riley  
Hailey Scoville Bonham  
London, Kentucky