

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANTS:

MARK J. PHILLIPOFF
BRIAN R. GATES
Jones Obenchain, LLP
South Bend, Indiana

ATTORNEY FOR APPELLEE:

ROBERT J. PALMER
May • Oberfell • Lorber
Mishawaka, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF)
)
KATHRYN ANNIS,)
)
Appellant-Petitioner,)
)
and) No. 71A05-0809-CV-516
)
RICHARD JOEL ANNIS,)
)
Appellee-Respondent.)

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
The Honorable Larry L. Ambler, Magistrate
Cause No. 71C01-9403-DR-191

April 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner Kathryn Annis (“Kathryn”) appeals the trial court’s dismissal of her petition for spousal maintenance from Appellee-Respondent Richard Joel Annis (“Richard”). We reverse and remand.

Issue

Whether the trial court erred in dismissing the petition for spousal maintenance.

Facts and Procedural History

In March of 1994, Kathryn filed for the dissolution of her marriage to Richard. Kathryn and Richard entered into a property settlement agreement (“PSA”), which the trial court incorporated into its decree of dissolution. The PSA provided in relevant part:

. . . . The parties understand that this Court shall order the Husband to keep the Wife insured for health insurance purposes pursuant to a separate order. . . .

It is expressly understood and agreed that, under no circumstances, shall the Husband be obligated to pay for the Wife’s health insurance or care after the twenty-first (21st) birthday of the parties’ youngest child.

The parties further acknowledge that Wife is currently suffering from certain medical conditions, including multiple sclerosis and thrombocythemia. The MS is currently in remission. Wife is taking numerous prescription medicines which, at the present time, cost approximately \$1,200.00 per month. The medical conditions of Wife may subsequently result in her being rendered incapacitated to an extent where her ability to support and maintain herself in the future may be adversely affected.

Accordingly, pursuant to I.C. 31-1-11.5-9(c), the court retains continuing jurisdiction over the issue of possible maintenance to be paid by Husband to Wife in the event that such medical conditions of Wife hereinafter render her incapacitated so that her ability to support herself is permanently affected.

Furthermore, the parties recognize that Wife has been unemployed at different times during the marriage to raise the parties’ minor children. In order to assist

Wife with the transition back into the workplace, and recognizing the possibility of further medical complications that may affect Wife's ability for employment, Husband agrees to pay Wife a fixed amount of maintenance in the amount of One Thousand Dollars (\$1,000.00) per month starting immediately after the entry of Decree of Dissolution, until August 8, 2001.

Husband and Wife agree that there shall be no increases or decreases in the amount of said payments, regardless of any changes in the incomes of either or both of the parties and/or any changes in their financial circumstances, up through and including August 8, 2001.

Said obligation to pay maintenance shall be tax-deductible to the Husband, and taxable income to the Wife. The parties further agree to perform any act necessary in order for this agreement to comply with tax deductibility in accordance with the Internal Revenue Code. Said obligation to pay maintenance shall terminate when the youngest of said children reaches the age of twenty-one (21) or if the Wife remarries.

Appendix at 13-15.

On September 26, 2007, Kathryn filed a Petition for Spousal Maintenance, alleging that by 2001 her multiple sclerosis had worsened to the point that she was totally disabled and qualified for Social Security disability payments. Citing the PSA, Kathryn requested the trial court to order Richard to pay her spousal maintenance due to her incapacity. On June 6, 2008, Richard filed a Motion for Ruling on Limitations for Spousal Maintenance as Agreed by the Parties, requesting the trial court to dismiss Kathryn's petition because the language of the PSA indicates that his responsibility to pay maintenance ended when their youngest child turned twenty-one.

After a hearing on the parties' arguments regarding the interpretation of the PSA, the trial court issued its order dismissing Kathryn's Petition. The order provided in part:

3. The legal issue before the Court is whether the language as contained in the PSA gives the Court continuing jurisdiction as to I.C. 31-1-11.5[-9](c) or did

the jurisdiction of this Court over such matters cease on August 8, 2001 (the youngest child's twenty-first (21st) birthday)[.]

4. The Court now grants Respondent's motion to dismiss Petitioner's petition for spousal maintenance under I.C. 31-1-11.5.9 (c) for the following reasons:

- a) The post-dissolution obligations of Respondent to the Petitioner[] have an expiration date of August 8, 2001[,] which is the date of the youngest child's twenty-first (21st) birthday.
- b) The Court would have no jurisdiction to award I.C. 31-1-11.5.9 (c) maintenance after the decree of dissolution is executed.
- c) Per the PSA, Respondent waived his right to argue jurisdiction until after the youngest child attained its twenty-first (21st) birthday. Such a waiver would harmonize with the other obligations Respondent agreed to undertake until the youngest child attains its twenty-first (21st) birthday.
- d) When taking the above into consideration[,] it is logical that Respondent's "cap" on obligations to Wife is thereby set forth in the following language: "It is expressly understood and agreed that, under no circumstances shall the Husband be obligated to pay for Wife's health insurance or care after the twenty-first (21st) birthday of the parties' youngest child."

Appendix at 4-5. Kathryn now appeals.

Discussion and Decision

I. Standard of Review

When dissolving a marriage, the parties are free to craft their own settlement agreements, which are both contractual in nature and binding. Griffin v. Griffin, 872 N.E.2d 653, 656 (Ind. Ct. App. 2007). Parties are bound by these agreements when the dissolution court merges and incorporates the agreement into the divorce decree. Shorter v. Shorter, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). Our Supreme Court has determined that a dissolution

court retains exclusive continuing jurisdiction to interpret a property settlement agreement and is in the best position to make such interpretation. Id.

Property settlement agreements are contracts that we review using the general principles of contract law. Fackler v. Powell, 891 N.E.2d 1091, 1095 (Ind. Ct. App. 2008), trans. denied. Construction of the terms of a contract is a question of law, which we review *de novo*. Collins v. McKinney, 871 N.E.2d 363, 372 (Ind. Ct. App. 2007). If the contract language is unambiguous and the intent of the parties is discernible from the written contract, the court gives effect to the terms of the contract. Fackler, 891 N.E.2d at 1096. When a contract is unambiguous, the terms as expressed within the four corners of the contract are conclusive, and we do not construe the contract or look to extrinsic evidence. Id. Rather, we merely apply the contractual provisions. Id.

A contract is ambiguous if a reasonable person would find the contract subject to more than one interpretation. Id. However, the terms are not ambiguous merely because the parties disagree as to the interpretation. Id. We determine the meaning of a contract by examining all of its provisions, without giving special emphasis to any word, phrase or paragraph. Hepburn v. Tri-County Bank, 842 N.E.2d 378, 384 (Ind. Ct. App. 2006), trans. denied. The contract is read as a whole, and we avoid interpreting individual sections in a manner that would cause them to conflict. Id.

II. Analysis

Both parties and the dissolution court address the presented issue in terms of jurisdiction. However, this is a mischaracterization. Seeking to refine the types of

jurisdiction, the Indiana Supreme Court clarified that there are only two types of jurisdiction in Indiana: subject matter jurisdiction and personal jurisdiction. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). The Court noted that the phrase “jurisdiction over a particular case” truly represents an issue of legal error rather than the exercise of jurisdiction. Id. While the parties do not use the term “jurisdiction over a particular case,” their usage of “jurisdiction” does not fit with either subject matter or personal jurisdiction.

Here, there is no question that the dissolution court has personal jurisdiction over the parties. As for subject matter jurisdiction, a dissolution court obviously has jurisdiction over matters of divorce, including the provision of spousal maintenance and the interpretation of a property settlement agreement. See Ind. Code § 31-15-7-2; Shorter, 851 N.E.2d at 383. Therefore, the dissolution court had the continuing authority to rule on Kathryn’s petition for spousal maintenance and interpret the PSA that was incorporated into the Decree of Dissolution.

So what is the meaning of the PSA provision declaring that “the court retains continuing jurisdiction over the issue of possible maintenance?” Essentially, the parties agreed that Kathryn’s potential claim for spousal maintenance, based on her medical conditions rendering her incapacitated for purposes of Indiana Code Section 31-11-11.5-9(c), would remain undecided. This clause effectively delayed the applicability of the doctrine of claim preclusion. Claim preclusion, a branch of res judicata, bars a subsequent action involving the same parties and the same claim upon which a final judgment on the merits has already been rendered. Perry v. Gulf Stream Coach, Inc., 871 N.E.2d 1038, 1048 (Ind. Ct.

App. 2007). The doctrine applies to matters that were at issue in the original action or could have been raised. Id.

During the divorce proceedings, Kathryn could have raised the issue of spousal maintenance, but it was clear that an award was unlikely because at the time she was working full time. Recognizing that her medical conditions could change, the parties agreed to subject themselves to the authority of the court at a later time for its determination of spousal maintenance if Kathryn's MS incapacitated her. Thus, due to this provision ("Incapacity Provision") in the PSA, any petition for spousal maintenance during the provision's operative time would not be barred by claim preclusion because the parties agreed to leave the issue undecided. So the question before us is when does the operation of this provision end, if ever.

Kathryn interprets the Incapacity Provision to have indefinite duration while Richard reads the language of the PSA to extinguish any financial obligation that he may have to Kathryn on August 8, 2001. We conclude that both are reasonable interpretations of the maintenance section of the PSA, making it ambiguous.

One interpretation, as advanced by Kathryn, is that there is no time limitation as to availability of court-ordered spousal maintenance because the paragraph regarding the "possible maintenance" does not include any time reference. Furthermore, the subsequent paragraphs do not specifically refer to incapacity maintenance or court-ordered maintenance. As such, there is no explicit date at which the Incapacity Provision ends.

However, another reasonable interpretation, suggested by Richard, is that the date of

August 8, 2001, terminates Kathryn's possible claim to court-ordered spousal maintenance based on the language of the paragraphs following the Incapacity Provision. The PSA contains two specific provisions by which Richard could be required to make "maintenance" payments. The first provision by which Richard could have been required to pay maintenance was if Kathryn's medical conditions worsened to the point of her incapacity. The second provision by which Richard was to make "maintenance" payments to Kathryn was the monthly payment of one thousand dollars. The PSA provided that the amount of this payment was not modifiable no matter the changes in either party's financial status. This paragraph provided that Richard was required to make this payment "starting immediately after the entry of Decree of Dissolution, until August 8, 2001."

Immediately following the second provision by which Richard was obligated to pay "maintenance," the PSA concludes:

Said obligation to pay maintenance shall be tax-deductible to the Husband, and taxable income to the Wife. The parties further agree to perform any act necessary in order for this agreement to comply with tax deductibility in accordance with the Internal Revenue Code. Said obligation to pay maintenance shall terminate when the youngest of said children reaches the age of twenty-one (21) or if the Wife remarries.

App. 15. Because "[s]aid obligation to pay maintenance" directly follows the mandatory monthly "maintenance" payments, this phrase could logically refer only to the second provision for maintenance payments. However, as the PSA provided two instances in which Richard could be obligated to pay maintenance to Kathryn, this subsequent paragraph referring to "said obligation to pay maintenance" could be interpreted to apply to both the agreed upon maintenance payments as well as that which could have been ordered by the

dissolution court. Therefore, under this second interpretation, any obligation for Richard to pay maintenance to Kathryn, whether under court order or according to the mandatory monthly payments, terminated when the youngest child of the marriage turned twenty-one or if Kathryn remarried.

The dissolution court order concluded implicitly that the PSA was unambiguous by its interpretation that any obligation for Richard to pay Kathryn maintenance ended on August 8, 2001, when the parties' youngest child reached the age of twenty-one. We conclude that, while this interpretation is valid, the PSA is ambiguous because it is subject to another reasonable interpretation that would leave open indefinitely the possibility of court-ordered incapacity maintenance. The dissolution court only heard arguments regarding the interpretation of the PSA language. No evidence was admitted, so there is no extrinsic evidence before us to aid in determining the intent of the parties at the time of the contract. Accordingly, we reverse and remand to the dissolution court for further proceedings.

Reversed and remanded.

MAY, J., concurs.

MATHIAS, J., concurs with opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MARRIAGE OF)	
)	
KATHRYN ANNIS,)	
)	
Appellant-Petitioner,)	
)	
and)	No. 71A05-0809-CV-516
)	
RICHARD JOEL ANNIS,)	
)	
Appellee-Respondent.)	

Mathias, J., concurring

I respectfully concur with my colleagues in this case. I write briefly to emphasize the obvious: this is an extremely close call in an extremely difficult case. The nature of Wife's illness is the only thing that allows the portion of the agreement conferring continuing jurisdiction on the court to become ambiguous and subject to additional interpretive evidence.