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FILED
Sep 19 2011, 9:30 am
CLERK
of the supreme court, court of appeals and tax court

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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| KYLE J. BONEBRIGHT, | ) | |
| | ) | |
| Appellant-Respondent, | ) | |
| | ) | |
| vs. | ) | No. 86A03-1104-DR-153 |
| | ) | |
| LORI A. BONEBRIGHT, | ) | |
| | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE WARREN CIRCUIT COURT
The Honorable John A. Rader, Judge
Cause No. 86C01-0909-DR-177

**September 19, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-respondent Kyle J. Bonebright appeals the trial court's order interpreting the settlement agreement incorporated into the decree of dissolution of his marriage to appellee-petitioner Lori A. Bonebright. Specifically, Kyle argues the trial court erred when it interpreted the settlement agreement as transferring to Lori the entirety of Kyle's deferred compensation account as of November 4, 2011. Finding no error, we affirm the judgment of the trial court.

## FACTS

Lori filed a verified petition for dissolution of marriage on September 15, 2009. The parties negotiated a settlement agreement (the Agreement), which the dissolution court approved and incorporated in the final decree of dissolution on November 4, 2010. In pertinent part, the Agreement provides:

> 2.08 **Retirement Account**. Husband has a Deferred Compensation Account in the amount of $21,000 which will become the sole and separate property of wife. Wife's attorney to draft the Qualified Domestic Relations Order. Husband has a pension in the approximate amount of $52,194 which will remain his sole and separate property. Wife shall have no claim to the Husband's pension.

Appellant's App. p. 9.

On January 17, 2011, the trial court entered the Qualified Domestic Relations Order (QDRO) for the deferred compensation account (the Account) as prepared by Lori. Kyle then moved to vacate the QDRO, and the trial court granted his motion on January

21, 2011. Lori filed a motion to reconsider, and, on April 7, 2011, the court held a hearing regarding the interpretation of the paragraph apportioning the Account. On April 11, 2011, the trial court entered an order finding that Lori "is entitled to the amount in the [Account] as of November 4, 2010, together with any gains or losses to such amount on deposit on November 4, 2010, due to interest or dividend accruals, and market fluctuations." Id. at 6. Additionally, "[a]ny other amounts in such account due to contribution and accruals on November 5, 2010, or after on any amounts deposited thereafter by [Kyle] shall be the separate property of [Kyle]." Id. Kyle now appeals.

## DISCUSSION AND DECISION

Kyle contends that the trial court erred when it ordered that Lori was entitled to the entirety of the Account as valued on November 4, 2010. Specifically, he argues that the language in paragraph 2.08 unambiguously provides that Lori is to receive the fixed sum of $21,000 from the Account.

When dissolving a marriage, the parties are free to draft their own settlement agreement. White v. White, 819 N.E.2d 68, 70 (Ind. Ct. App. 2004). Such agreements are contractual in nature and become binding upon the parties when the dissolution court merges and incorporates that agreement into the divorce decree. Id. When interpreting these agreements, we apply the general rules applicable to the construction of contracts. Id. That is, unless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning. Id. Terms are ambiguous if a reasonable person would find them subject to more than one interpretation, but are not ambiguous merely because the parties

disagree concerning their proper interpretation. Fackler v. Powell, 891 N.E.2d 1091, 1096 (Ind. Ct. App. 2008). Interpretation of a settlement agreement, as with any other contract, presents a question of law and is reviewed de novo. Shorter v. Shorter, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006).

Here, both parties acknowledge—and we agree—that the sentence apportioning the Account is unambiguous; but a dispute arises over the role of "in the amount of $21,000" in the sentence. Kyle argues that this inclusion of the amount operates to transfer to Lori the fixed sum of $21,000 and not the entire account. The sentence provides that "[h]usband has a Deferred Compensation Account in the amount of $21,000 which will become the sole and separate property of wife." The Account is the subject of the sentence and "in the amount of $21,000" both follows and modifies the subject. Thus, "in the amount of $21,000" does no more than describe the account at the time it was included in the Agreement. Therefore, we find that the plain language of the Agreement transfers the entire Account to Lori.

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.