STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0698

In re the Marriage of:

Denise C. Seymour, n/k/a Denise Harju, petitioner,
Appellant,

vs.

Robert L. Seymour,
Respondent.

Filed April 14, 2009
Affirmed
Lansing, Judge

Dakota County District Court
File No. 19-F6-91-015851

John T. Burns Jr., Burns Law Office, 200 American Bank Building, 14300 Nicollet Court, Burnsville, MN 55306; and

Lyndsay J. Howard, Howard Family Law, LLC, Suite 308, 190 South River Ridge Circle, Burnsville, MN 55337 (for appellant)

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Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

LANSING, Judge

This appeal from the district court's order interpreting a provision in a marital-dissolution judgment presents a question on the authority of the district court to clarify the judgment and an associated qualified domestic relations order (QDRO). Because we conclude that the original judgment and QDRO were ambiguous and that the district court's clarification order properly reflects the intended result of dividing the marital portion of the pension equally, we affirm.

F A C T S

Denise Harju and Robert Seymour dissolved their twenty-one-year marriage in December 1992. Harju and Seymour stipulated to all property-division issues including the division of Seymour's pension from his employment with the Federal Aviation Administration. They summarized the terms of the division on the record in the proceedings, stating that Seymour would recover his eighteen-percent nonmarital portion of the pension, and "the balance of [eighty-two] percent will be divided equally between the parties."

Harju later submitted a written QDRO describing the stipulated division. The district court incorporated the QDRO provisions verbatim in the dissolution judgment, explicitly stating that the provisions were "based on the stipulation of the parties." The court subsequently issued the QDRO as a separate order.

The QDRO provides that "pension benefits otherwise payable to [Seymour] shall be paid as follows." It then refers specifically to Seymour's benefits under the Civil

Service Retirement System (CSRS) Plan and provides terms and information to direct division of the asset. It sets a valuation date for the benefits and states that the amount payable to Harju "shall be the amount otherwise payable to [Seymour] pursuant to such Plan multiplied by [forty-one percent]," which is half of the eighty-two-percent marital portion of the pension.

A separate provision states that Harju "shall be treated as a surviving spouse under the Plan" and that, if Seymour dies, payment is to be made accordingly to Harju "as provided in the Plan for a surviving spouse." The QDRO also explicitly states that it is intended to meet the requirements of federal law and "shall be modified as necessary to meet" those requirements.

Federal regulations in effect at the time of the dissolution explain the way in which the federal Office of Personnel Management (OPM) construes court orders that attempt to establish entitlement to a portion of a federal employee's pension. The regulations prescribe the language that must be included in orders to be "acceptable for processing" by the OPM. *See, e.g.*, 5 C.F.R. § 838.305 (2009) (noting that court order must provide "sufficient instructions and information" for OPM to compute former spouse's monthly benefit). The regulations also address potential ambiguities by providing a default rule for orders that do not explicitly state a provision necessary for implementation. *See, e.g.*, 5 C.F.R. § 838.306 (2009) (providing that former spouse's percentage is to be applied to amount of monthly benefit after cost of annuity is deducted).

Neither Seymour nor Harju appealed from the dissolution judgment or otherwise addressed the judgment and QDRO for nearly a decade. But as Seymour approached

retirement age, OPM provided him with information indicating that, under the QDRO, Harju would receive a survivor annuity. The information led him to believe that Harju's annuity had an associated cost that would be collected by a deduction from Seymour's monthly pension payment.

Seymour filed a motion in district court in 2005, which he amended in 2007, seeking to revisit the language in the QDRO. Seymour argued that the QDRO did not mention a survivor annuity and made no provision for how it should be funded. He asked the district court to clarify the QDRO so that the cost of the annuity would be divided equally between him and Harju. He estimated that the monthly pension amount available for division between them would be about $5,000 and that, based on the statutory formula, the monthly cost of Harju's survivor annuity would be approximately eleven percent of that amount.

Harju argued that Seymour's request for an amended judgment was untimely and that the district court did not have authority to amend the QDRO in any way that would alter its plain language that granted Harju forty-one percent of the asset. Harju and Seymour each submitted arguments and affidavits in support of their positions.

The district court found that the judgment and the QDRO were ambiguous "in that they do not address who is responsible for payment of the survivor annuity." Based on the submissions and on the language of the original oral stipulation, the district court issued an order "to clarify" the original judgment and QDRO "to expressly state that the cost of [Harju's] survivor annuity . . . shall be funded by . . . withholding [fifty percent]

of the costs from [Seymour's] pension payments and [fifty percent] of the costs from [Harju's] pension payments."

In its memorandum, the district court stated that its ruling complied with caselaw allowing clarification of ambiguous judgments so long as the substantive rights of the parties remain unchanged. The memorandum concluded that the parties' rights were not changed because the order was consistent with the intent of the judgment and decree, which was to divide the retirement proceeds equally after deducting Seymour's nonmarital share of eighteen percent.

Harju appeals from the district court's order, arguing that the QDRO was not ambiguous and that the district court's interpretation impermissibly altered Harju's rights under the QDRO.

D E C I S I O N

The two related questions raised in this appeal are (1) whether the district court properly determined that the original judgment and QDRO were ambiguous and, therefore, subject to interpretation, and (2) whether the clarification improperly alters Harju's property rights.

A district court's authority to reopen a marital-dissolution judgment is limited by statute. Minn. Stat. § 518.145 (2008). Absent a statutory basis to reopen a dissolution judgment after the time for appeal has expired, the district court may not modify a division of property. *Mikkelsen v. Mikkelsen*, 286 Minn. 520, 522, 174 N.W.2d 241, 243 (1970). Likewise, a stipulated division of property incorporated in a judgment is subject to the laws of contract, *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997), and must be

construed according to its plain meaning when its text is unambiguous. *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977).

A writing is ambiguous when it is susceptible to more than one reasonable interpretation. *ICC Leasing Corp. v. Midwestern Mach. Co.*, 257 N.W.2d 551, 554 (Minn. 1977). If a judgment's text is "of doubtful meaning or open to diverse constructions," the district court has the authority to clarify it. *Stieler v. Stieler*, 244 Minn. 312, 319, 70 N.W.2d 127, 131 (1955). Clarification requires giving "full effect to that which is necessarily implied in the judgment, as well as to that actually expressed." *Id.*, 70 N.W.2d at 131-32. In clarifying a judgment, the district court must examine the whole record and adopt the construction that properly reflects the intended effect. *Palmi v. Palmi*, 273 Minn. 97, 103, 140 N.W.2d 77, 81 (1966). A proper clarification does not amend the judgment's terms or challenge its validity. *Stieler*, 244 Minn. at 319, 70 N.W.2d at 131.

The question of whether a judgment is ambiguous is an issue of law, which we review de novo. *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). When a district court construes its own ambiguous judgment, its interpretation is entitled to great deference. *Palmi*, 273 Minn. at 104, 140 N.W.2d at 82.

To determine whether the QDRO is ambiguous on its face, we examine its text in light of the applicable federal law. CSRS pensions are established under 5 U.S.C. § 8338 (2006) and the entitlements of widows and/or former spouses are addressed under 5 U.S.C. § 8341 (2006). Subdivision h of that section provides that a former spouse may be granted a survivor annuity "if and to the extent expressly provided for . . . in the terms

of any decree of divorce . . . or any court order or court-approved property settlement agreement incident to such decree." When a survivor annuity is established, its cost must be recovered by monthly reductions established by formula. 5 U.S.C. § 8339(j)(2), (4) (2006).

The total monthly amount of the retirement benefit available for division between Seymour and Harju is approximately $5,000. The monthly cost of a survivor annuity is about eleven percent of that amount. Thus, under the regulations, the monthly benefit amount is necessarily reduced each month by the survivor-annuity percentage, regardless of how Seymour and Harju divide the asset. The QDRO, however, grants Harju both the survivor annuity and forty-one percent of the "amount otherwise payable" to Seymour each month.

Because the annuity automatically causes an eleven percent reduction of the monthly pension amount, the meaning of the phrase "amount otherwise payable" is not clear. On one hand, it would be reasonable to conclude, because of the automatic deduction, that the whole $5,000 is not otherwise payable to Seymour each month. Only eighty-nine percent of the $5,000 is payable—roughly $4,450—and so Harju is to receive forty-one percent of *that* amount. On the other hand, it would also be reasonable to conclude that the "amount otherwise payable" to Seymour is intended as a reference to his retirement benefit generally, meaning that Harju is to get forty-one percent of the whole $5,000 every month.

Both of these interpretations are reasonable and, although the federal regulations explicitly anticipate this circumstance, they fail to provide a definitive answer. The

regulations specifically address how the OPM will calculate a former spouse's monthly share when the QDRO grants the former spouse both a survivor annuity *and* a percentage of the employee's monthly benefits. 5 C.F.R. § 838.306. Unless the court's order directs otherwise, the OPM will apply the default rule under the regulations, which requires that the former-spouse's percentage be applied to the amount of the monthly benefit *after* the cost of the annuity has been deducted. *See id*. (designating amount *after* reduction, somewhat counter-intuitively, as "gross annuity," and making it default rule for calculating former spouse's monthly benefit). Thus, under the default rule, Harju would bear a proportional share of the survivor annuity.

When the former spouse's percentage is applied to the amount of the total monthly benefit *before* the annuity is deducted, the former spouse bears none of the cost of the annuity. If a court intends to override the default rule and to require the OPM to apply the former spouse's percentage to the total monthly benefit before the annuity has been deducted, its order must "direct" the OPM to do so. *Id.* The regulations suggest several terms that a court can use to direct the OPM to apply the percentage in this way. The primary means of directing this method, according to the regulations, is for the court to provide that the deduction should be based on the "self-only" amount. *See id.* (cross-referencing 5 C.F.R. § 838.103 (2009), which defines self-only annuity as "the recurring unreduced payments to a retiree with no survivor annuity payable to anyone"). The regulations also identify several synonyms for the "self-only" amount, including "(1) Life rate annuity; (2) Unreduced annuity, and (3) Annuity without survivor benefit." 5 C.F.R. § 838.625 (2009). The regulations do not indicate whether these terms are exclusive or

whether a court may use similar terms to direct the "self-only" amount. *Cf.* 5 C.F.R. § 838.912 (2009) (stating explicitly in different provision that language "similar" to given phrases is sufficient to trigger provision).

Seymour and Harju's QDRO does not specifically say Harju gets forty-one percent of the monthly "self-only" amount. Instead it uses the term "amount otherwise payable." This term might be reasonably understood to mean the same as "unreduced annuity"—one of the recognized synonyms—but that meaning is neither plain nor without doubt. Because it is unclear whether "amount otherwise payable" means the same as "unreduced annuity" and it is unclear whether the regulations allow use of terms other than those specifically sanctioned, the application of the regulation only results in the same unanswered question, namely, whether "amount otherwise payable" means the amount before or after deducting the eleven-percent cost of the survivor annuity.

Seymour has suggested that the OPM arrived at an interpretation of "amount otherwise payable" in the QDRO. That does not mean, however, that the phrase is unambiguous. It only means that the OPM was able to engage in interpretive work similar to the interpretive work that we have outlined. The end result is that the regulations do not plainly require one interpretation or the other.

Because the QDRO is ambiguous on its face, the district court acted within its discretion to clarify it. *Stieler*, 244 Minn. at 319, 70 N.W.2d at 131-32.

Turning to the second issue, we reject Harju's argument that the clarification improperly alters her property rights. The purpose of the QDRO, as stipulated on the record in the original proceeding, was to grant Seymour eighteen percent of the benefits

as nonmarital property and to provide that "[t]he balance of [eighty-two] percent will be divided equally between the parties." The district court's clarification preserves Harju's half of the eighty-two percent marital portion. To preserve the equal division, the district court "funded [the annuity] by . . . withholding fifty percent of the costs from [Harju's] pension payments and fifty percent of the costs from [Seymour's] pension payments." The monthly payments will therefore reflect an equal division of the nonmarital portion. Seymour will retain the eighteen percent that is his nonmarital property and the balance will be equally divided between Harju and Seymour.

The court's interpretation accurately reflects the evidence of what the QDRO was meant to accomplish. Therefore, neither Harju's nor Seymour's clearly established property interests have been altered.

Affirmed.