

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-14-967

MARK LAMB

APPELLANT

V.

ANGELA LAMB RODRIGUEZ

APPELLEE

Opinion Delivered APRIL 15, 2015

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. DR-2004-500 (II)]

HONORABLE ANNIE HENDRICKS,
JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Mark Lamb appeals from a July 14, 2014 order filed by the Sebastian County Circuit Court in favor of appellee Angela Lamb Rodriguez. On appeal, appellant contends that (1) the trial court committed reversible error when it interpreted the divorce decree as granting a specific percentage of appellant's military retirement and awarded appellee a judgment for such increases and (2) that the trial court failed to properly consider appellant's defenses in making its award of judgment. We affirm.

Lamb and Rodriguez were previously married on February 9, 1987, and then separated on or about February 1, 2004. After Rodriguez filed a complaint for divorce, Lamb and Rodriguez entered into a property-settlement agreement ("PSA") that was filed on September 27, 2004. In relevant part, the PSA provides that "Husband agrees that Wife is entitled to and is to receive one-half (1/2) of his military retirement pay as marital property." Subsequently,

a divorce decree, incorporating the PSA, was filed on September 27, 2004. The divorce decree specifically stated in relevant part,

6. That the parties have entered into a Property Settlement Agreement which forever settles the respective rights and claims of each party in and to property and other matters, which agreement is filed herein and incorporated into this Decree by reference.

7. That the Court further finds that the terms and provisions of such agreement are in all respects fair and equitable, and that the agreement should be approved and confirmed.

8. That Defendant's net military retirement pay is \$1,351.00 per month, and that Plaintiff is entitled to and is to receive from the Defendant one-half (1/2) of his disposable military retirement pay as her share of the marital property for the years during their marriage pursuant to 10 U.S.C. § 1408. That the amount of Defendant's disposable military retirement pay to which Plaintiff is entitled as marital property is \$ 574.00 per month.

.....

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay to Plaintiff as marital property one-half (1/2) of his disposable military retirement pay.

.....

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Property Settlement Agreement referred to herein be, and the same is, hereby approved and confirmed in all things, and the provisions of the agreement shall have the same force and effect as this decree and shall be enforced by further orders of the Court upon the petition of either party upon the same basis as if such provision had been promulgated and ordered by the Court.

On March 11, 2013, Rodriguez filed a motion to enforce the PSA and motion to modify the decree. She alleged that Lamb had refused to pay the total amount of her one-half share of his military-retirement pay as required by the PSA and decree. She further alleged that Lamb had contacted the Department of Finance and Accounting Services, which processes military-retirement pay, and informed it that Rodriguez was entitled to only \$574

per month, excluding any cost-of-living adjustments. Therefore, Rodriguez alleged that she had not received any cost-of-living adjustments since the decree, and she alleged that she was entitled to a judgment for the difference between what she was entitled to under the PSA and decree, that the decree should be modified to reflect that she was entitled to receive the cost-of-living adjustments, and that she was entitled to costs and attorney's fees.

Lamb filed an answer on April 12, 2013, denying that Rodriguez was entitled to the additional payments and to have the decree modified. On October 4, 2013, Lamb filed an amended answer and counterclaim. In his answer, he pleaded the following affirmative defenses: accord and satisfaction, laches, estoppel, statute of limitation, statute of frauds, unclean hands, unconscionability, lack of consideration, and waiver. In his counterclaim, Lamb alleged that Rodriguez owed him for past child support for the time he cared for their child full-time while still paying the full amount of child support or alternatively, that the cost-of-living adjustment payments should be offset with these incorrect child-support payments. Rodriguez filed an answer generally denying these allegations on October 21, 2013.

At a June 10, 2014 hearing, the parties agreed that they would “forgo testimony in this matter” and would provide written briefs for the trial court. After the parties filed posttrial briefs for the trial court's consideration, the trial court issued a letter ruling that was incorporated into a subsequent order filed on July 14, 2014. In its order, the trial court found that it had jurisdiction to construe, clarify, and enforce the parties' PSA, which was incorporated into the divorce decree. It further found that the PSA provided that a specific

percentage of Lamb's military-retirement pay was to be distributed to Rodriguez and that the net amount should have increased as Lamb's pay increased over time. Therefore, Lamb was ordered to pay \$30,599 in past payments, to pay one-half of his military-retirement pay prospectively, and to pay attorney's fees in the amount of \$1,500.

The order did not, however, make any specific findings regarding Lamb's affirmative defenses or counterclaim. Lamb filed a motion for clarification of judgment on July 15, 2014, requesting the court to specifically address his affirmative defenses and counterclaim, and Rodriguez filed a response requesting the trial court to deny this motion on July 23, 2014. The trial court filed an order denying Lamb's motion on August 4, 2014, specifically denying the motion to the extent the motion was filed pursuant to Arkansas Rule of Civil Procedure 52(a) and (b). Subsequently, Lamb filed a timely notice of appeal on August 13, 2014, contesting only the final July 14, 2014 order after specifically abandoning "any pending but unresolved claim[s]." *See* Ark. R. App. P.–Civ. 3 (2014).

On appeal, this court reviews divorce cases de novo on the record. *Tiner v. Tiner*, 2012 Ark. App. 483, 422 S.W.3d 178. Moreover, we will not reverse a trial court's finding of fact in a divorce case unless it is clearly erroneous. *Id.* Findings of fact made by the circuit court in a divorce case will be reviewed by this court in the light most favorable to the appellee, and we will defer to the superior position of the circuit court to judge the credibility of witnesses. *Id.* However, a trial court's conclusion on a question of law is given no deference on appeal. *Id.*

A trial court has the power to construe, clarify, and enforce a parties' settlement

agreement. *Surratt v. Surratt*, 85 Ark. App. 267, 148 S.W.3d 761 (2004). Questions relating to the construction, operation, and effect of such agreements are governed by the rules and provisions applicable in the case of other contracts generally. *Id.* When a contract is unambiguous, its construction is a question of law for the court. *Evans v. Evans*, 2009 Ark. App. 626. A contract is unambiguous and its construction and legal effect are questions of law when its terms are not susceptible to more than one equally reasonable construction. *Id.* When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court's duty to construe the writing in accordance with the plain meaning of the language employed. *Surratt, supra.*

On appeal, appellant first contends that the trial court committed reversible error when it interpreted the divorce decree as granting a specific percentage of appellant's military retirement and awarded appellee a judgment for such increases. After reviewing the trial court's July 14, 2014 order, the trial court specifically stated that it was enforcing the PSA that was incorporated into the divorce decree and not that it was interpreting the divorce decree as Lamb states in his first point on appeal. That said, Lamb correctly argues that the trial court was free to approve, disapprove, or modify the PSA prior to its incorporation into the divorce decree; however, once the trial court approves and incorporates a PSA into the divorce decree, it may not be subsequently modified. *Rogers v. Jennings*, 2010 Ark. App. 428, 375 S.W.3d 698; *Rutherford v. Rutherford*, 81 Ark. App. 122, 98 S.W.3d 842 (2003).

Here, it is clear from the divorce decree that the trial court fully approved and confirmed the PSA and incorporated it into the divorce decree. Although appellant suggests

that the trial court modified the PSA when it approved it to allow only a specific dollar amount rather than a specific percentage of appellant's military retirement, this allegation is not supported by the decree. The divorce decree specifically stated that the trial court approved and confirmed the PSA "in all things," without any limiting language, and found that the PSA was fair and equitable. It further stated that the net military retirement pay was \$1,351 per month and that Rodriguez was entitled to one-half of the disposable military retirement pay, which meant she was entitled to \$574 per month.¹ This was not a modification of the PSA to a static or specific dollar amount but simply was an explanation of what Rodriguez was entitled to at the time of the divorce. This conclusion was further supported by the fact that the same decree specifically stated, "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay to Plaintiff as marital property one-half (1/2) of his disposable military retirement pay." Clearly, this language in the PSA and the divorce decree was plain and unambiguous. Rodriguez was to receive a specific percentage of the disposable military-retirement pay, without any limitation to any increases that occurred over time. Thus, the trial court did not err in enforcing the PSA, as the PSA required Lamb to pay one-half of his military-retirement pay, regardless of whether

¹ We note that there seems to be a disparity in the numbers as stated in the divorce decree when it states, "That Defendant's net military retirement pay is \$1,351.00 per month, and that Plaintiff is entitled to and is to receive from the Defendant one-half (1/2) of his disposable military retirement pay as her share of the marital property for the years during their marriage pursuant to 10 U.S.C. § 1408. That the amount of Defendant's disposable military retirement pay to which Plaintiff is entitled as marital property is \$ 574.00 per month." However, the parties do not raise this issue on appeal, and it is not relevant to our review.

his pay increased over time.

On appeal, appellant next contends that the trial court failed to properly consider his affirmative defenses in making its judgment award. Specifically, Lamb argues that the doctrines of laches and equitable estoppel barred Rodriguez's claims. Additionally, he argues that the "judgment must be adjusted by a set-off of moneys paid by [him.]" However, this court is precluded from reaching the merits of these arguments on appeal because Lamb failed to obtain a ruling on these arguments in the July 14, 2014 order. Furthermore, to the extent that these arguments may have been preserved by the trial court's subsequent August 4, 2014 order denying Lamb's motion for clarification of judgment, he failed to appeal from this order; therefore, it is not properly before this court. Rule 3(e) of the Rules of Appellate Procedure (2014) provides that a notice of appeal shall, among other things, "designate the judgment, decree, order, or part thereof appealed from." Therefore, our supreme court has held that "[a] notice of appeal must therefore designate the judgment or order appealed from, and an order not mentioned in the notice of appeal is not properly before an appellate court." *Lindsey v. Green*, 2010 Ark. 118, 369 S.W.3d 1. Here, appellant stated in his notice of appeal that he was appealing from the July 14, 2014 order and "abandon[ed] any pending but unresolved claim[s]." As such, we affirm the trial court.

Affirmed.

VAUGHT and BROWN, JJ., agree.

Huffman Butler PLLC, by: *Bryan R. Huffman*; and

Bugeja Law Firm, by: *Joshua W. Bugeja*, for appellant.

Robertson, Beasley, Shipley & Redd, PLLC, by: *Robert Kelly*, for appellee.