

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CA09-796

RITA C. WILLIAMS,

APPELLANT

V.

MICHAEL B. WILLIAMS,

APPELLEE

**Opinion Delivered** APRIL 21, 2010

APPEAL FROM THE YELL COUNTY  
CIRCUIT COURT  
[NO. CR2006-133]

HONORABLE DAVID H.  
MCCORMICK, JUDGE,

AFFIRMED

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**KAREN R. BAKER, Judge**

Appellant Rita C. Williams challenges the trial court's denial of her motion to enforce, interpret, and clarify the parties' divorce decree or, in the alternative, to set aside the decree based upon fraud. On appeal, she argues that the trial court erred in failing to enforce, clarify, or modify the divorce decree. We find no error and affirm.

In July 2007, an agreed divorce decree was entered that settled the property rights of the parties. Under the terms of the agreement, appellee Michael B. Williams, who was retired from the military, agreed to pay appellant Rita C. Williams the sum of \$5,000.00 with the expectation that appellant would use those funds to either reinstate or enroll herself in the Spousal Benefit Plan (SBP) offered to spouses of military personnel. Despite appellee's payment of the money to appellant, and the parties' efforts to enroll appellant in the plan, the

parties were eventually notified in 2008 that appellant was not eligible to participate in the SBP. Appellee states that appellant was denied enrollment because there was no longer an opportunity available in which appellant could enroll for benefits. While appellant's testimony regarding her eligibility included a discussion of problems with proper documentation, a lapse of time, and other comments, she appears to agree that she was denied benefits because there was no opportunity for her to reinstate or enroll in the plan. When appellant was unable to procure benefits through the SBP, she filed a motion to enforce, interpret, and clarify the divorce decree, or in the alternative, set aside the decree based upon fraud.

At issue is one sentence in the parties' divorce decree that reads as follows: "That the plaintiff (appellee) shall pay to the defendant (appellant) the sum of \$5,000.00 forthwith for the SBP and the defendant (appellant) shall pay any and all expenses related to the reinstatement of the SBP without any cost to plaintiff (appellee)." Appellant argues that with a critical part of the decree being impossible, the trial court had the ability to interpret the decree to determine the decree's intentions in such a situation. She further asserts that the discovery regarding the impossibility of appellant's enrollment in the SBP revealed a latent ambiguity in the parties' agreement that should have been addressed by the trial court. She urges us to find that the trial court could have adjusted the property division or made other adjustments to equalize the division of property.

Appellee replies that although appellant asked the trial court to consider the parties'

intent, her argument of latent ambiguity was not raised at the trial level and therefore the appellate court should not consider it. Furthermore, he maintains that her theory of what the decree intended was not admissible evidence even if this court were to consider appellant's assertion that appellee should be required to pay appellant the estimated value of what she would have received under the SBP.

Appellant and appellee cite the case of *Abbott v. Abbott*, 79 Ark. App. 413, 90 S.W.3d 10 (2002), claiming the case supports each of their respective positions. As a general rule, judgments are construed like any other instrument; the determinative factor is the intention of the court, as gathered from the judgment itself and the record. *Id.* (citing *Fox v. Fox*, 68 Ark. App. 281, 7 S.W.3d 339 (1999)).

In *Abbott*, the appellate court found no error in the trial court's holding that the divorce decree's provision awarding the ex-wife one-half of her ex-husband's "retirement" was latently ambiguous since the ex-husband's employer had three types of plans, and the ex-wife believed the decree awarded her a one-half interest in all of them. Under these circumstances, the trial judge's interpretation of "retirement" as including the 401(k) plan, the stock-sharing plan, and the pension plan was not clearly erroneous. Accordingly, the trial judge's award of \$17,511 to the ex-wife, which was one-half of the total amount of all three plans added together, was well within the trial court's jurisdiction to interpret, clarify, and enforce the original divorce decree. In *Abbott*, the trial court did not change or modify the original divorce decree. It merely clarified that all three accounts fell within the definition

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of the decree's reference to the wife's share of husband's retirement.

While the divorce decree's reference to "retirement" in *Abbott* was shown to be latently ambiguous, the case before us is distinguishable in that the trial court found that there was no ambiguity in the parties' agreement. When a contract is unambiguous, its construction is a question of law for the court, see *Moore v. Columbia Mut. Casualty Ins. Co.*, 36 Ark. App. 226, 228, 821 S.W.2d 59, 60 (1991), and the intent of the parties is not relevant. *Kennedy v. Kennedy*, 53 Ark. App. 22, 28, 918 S.W.2d 197, 200 (1996). Contracts entered into voluntarily must be enforced. It is well established that when parties enter voluntarily into an independent property-settlement agreement that is incorporated into a decree of divorce, it cannot subsequently be modified by the court. *Law v. Law*, 248 Ark. 894, 897, 455 S.W.2d 854, 856 (1970); *Kennedy, supra*.

There is no dispute between the parties that it was impossible for appellant to enroll in the SBP as contemplated by the parties. Specific performance will not lie where performance is impossible. *Heifner v. Hendricks*, 13 Ark. App. 217, 682 S.W.2d 459 (1985). Impossibility of performance of a contract sufficient to excuse the nonperformance upon the part of either party means an impossibility consisting in the nature of the thing to be done, and not in the inability of the party to do it, and it must be shown that the thing required under the contract cannot be accomplished, and the burden of showing this is upon the defendant. *Whipple v. Driver*, 140 Ark. 393, 215 S.W. 669 (1919). Because there is no dispute that appellant's enrollment was not possible, the trial court could not enforce the decree as

written.

In asking the court to modify or clarify the decree, appellant was asking the trial court to redraft the decree to award a value for what the SBP was worth; however, she presented no testimony from which the trial court could award an amount to compensate appellant for the value of the benefit of her bargain. A party seeking the reformation of a written contract and a specific performance of the contract as reformed has the burden of proving the contract claimed by clear, unequivocal, and decisive evidence. *Tri-State Constr. Co. v. Watts*, 152 Ark. 110, 237 S.W. 690 (1922). We agree with the trial court's observation that even if it erred in dismissing appellant's request to enforce, clarify or modify the divorce decree, there was no evidence from which the trial court could reform the parties' agreement. Accordingly, we find no error and affirm.

GRUBER and MARSHALL, JJ., agree.