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**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CV-18-819

TIM PARKER

APPELLANT

V.

SHARON PARKER

APPELLEE

Opinion Delivered: December 11, 2019

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04DR-02-1239]

HONORABLE JOHN R. SCOTT,  
JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Appellant Tim Parker appeals from the July 9, 2018 order of the Benton County Circuit Court finding that the parties' alimony provision in their property-settlement agreement was ambiguous and that it was the intent of the parties that his alimony payments to Sharon would increase once child support terminated. He argues that the trial court erred as a matter of law (1) in ruling that there was an ambiguity in the agreement; (2) in failing to construe the agreement against Sharon if there was an ambiguity in the agreement because Sharon's attorney drafted the agreement and divorce decree; (3) by granting the remedy of reformation, or alternatively, by modifying or changing the agreement; (4) in failing and refusing to strictly enforce the agreement as written; and (5) in dismissing his counterclaim for unjust enrichment due to his overpayment of alimony and his request that the overpayment be credited against any future alimony obligation. We affirm.

Tim and Sharon were divorced by a decree filed on December 27, 2002. The parties entered into a separate “Property Settlement, Custody, and Support Agreement,” which was incorporated into the divorce decree. The agreement stated in pertinent part:

3. CHILD SUPPORT: HUSBAND covenants and agrees to pay to WIFE, as support and maintenance for the child born of this marriage, the sum of Seven Hundred Fifty Dollars (\$750.00) per month, the first of said payments to commence the 5th day of December, 2002. The payments of child support shall continue to be paid by HUSBAND until the child shall attain the age of 18 years or if the child remains in school after age 18, the child support payments shall continue until the child shall graduate from high school. The obligation to pay support shall cease if the child becomes married; the child becomes fully and permanently employed gainfully and for a reasonable wage, excluding vacation and seasonal employment of a temporary nature; the child becomes inducted or enlists or enters upon active duty in the Armed services of the United States for a term of service not less than one year[.]

....

6. ALIMONY AND/OR MAINTENANCE: WIFE suffers from rheumatoid arthritis and other health concerns and is disabled within the meaning of the Social Security Act. In consideration of these factors and the earning potential of HUSBAND, HUSBAND shall pay to WIFE alimony in the amount of Three Hundred Fifty (\$350.00) per month to continue until the parties’ minor child reaches the age of 18 or graduates from high school, whichever is later. At that time, HUSBAND shall pay to WIFE alimony in the amount of One Thousand Dollars (\$1,000.00) per month until HUSBAND retires, dies, or is no longer able to be gainfully employed, whichever occurs first. In the event WIFE cohabitates or remarries, the obligation of alimony shall immediately cease and desist.

The parties filed a joint notification of death with the court on August 30, 2011, stating that their daughter, E.P., had died on August 5, 2011, at the age of fifteen. The notification also stated that appellant was current on his child-support payments at the time of her death. A death certificate was included with the notification.

Immediately following E.P.’s death, appellant began making \$1,000 monthly alimony payments and continued to do so for more than six years. Appellee filed a petition for contempt on March 15, 2018, contending that she had sent appellant a formal demand

for compliance on December 12, 2017, but that appellant had failed to abide by the terms of their agreement and was in willful contempt in that he had stopped making the \$1,000 monthly alimony payments as set out in the agreement. Appellee also sought attorney's fees. An order to show cause was entered on March 19. Appellant filed an answer to appellee's petition and a counterpetition on April 12. In his answer, he denied owing appellee any arrearages in alimony payments, contending that he had overpaid appellee. He also pled several affirmative defenses including set-off or offset, unjust enrichment, payment in full and overpayment, and equitable estoppel. In his counterpetition, appellant stated that his obligation to pay appellee child support terminated as a matter of law when E.P. died but that his obligation to pay appellee \$350 a month in alimony remained in full force and effect. His counterpetition further stated:

9. None of the parties or their attorneys made provision in the court documents for any increase in alimony beyond that originally agreed upon and ordered in the amount of three hundred fifty dollars (\$350.00) in the event [E.P.] died before graduating from high school or reaching the age of majority, despite full and fair opportunity to address that contingency. Accordingly, neither the Divorce Decree nor the Property Settlement, Divorce and Custody Agreement placed any alimony obligation upon Tim Parker other than the three hundred fifty dollar[s] (\$350.00) per month amount as stated in those court documents. Moreover, because Sharon Parker's attorney, Mark Fryhauf, drafted those documents, any ambiguities or uncertainties contained in or presented by those documents should be construed against Sharon Parker as a matter of law. Moreover, because neither party made provision for such contingency despite full and fair opportunity to do so[,] the court should not retroactively impose such a provision in the Divorce Decree and Property Settlement[,] Divorce and Custody Agreement.

10. Notwithstanding the lack of provision contained in either the Divorce Decree and Property Settlement, Divorce and Custody Agreement for any increase in alimony in the event [E.P.] died before turning eighteen (18) or graduating from high school, Tim Parker or his current wife, Amy Parker, on Tim's behalf, mistakenly began making alimony payments at the rate of one thousand dollar (\$1000.00) per month to Sharon Parker from the date of [E.P.'s] death in August 2011 through January 2018. [E.P.] would have turned eighteen years of age on November 7, 2013. She would have graduated from high school in May 2014[.]

Accordingly, even if Tim Parker were obligated to begin paying alimony of one thousand dollars (\$1000.00) per month as of what would have been [E.P.'s] eighteenth (18th) birthday or her graduation from high school, Tim Parker overpaid his court ordered alimony by six hundred fifty dollars (\$650.00) per month beginning August 5, 2011. Even if one assumes that his alimony obligation would have increased to one thousand dollars (\$1000.00) per month beginning with [E.P.'s] anticipated graduation from high school in May 2014, Tim Parker overpaid on his alimony obligation in the amount of Six hundred fifty dollars (\$650.00) per month for a total of between twenty nine (29) months from the date of [E.P.'s] death until her anticipated graduation from high school in May 2014 in the total amount eighteen thousand eight hundred fifty dollars (\$18,850.00). Tim Parker's legal alimony obligation did not increase at the time of [E.P.'s] death. Tim Parker has paid alimony to Sharon Parker in the amount of seventy-eight thousand dollars (\$78,000.00) from the date of [E.P.'s] death through January 2018. Because his legal alimony obligation never increased above three hundred fifty dollars (\$350.00) per month due to the death of [E.P.], Tim Parker should have paid alimony to Sharon Parker in the amount of twenty seven thousand three hundred dollars (\$27,300.00) or seventy eight (78) payments of three hundred fifty dollars (\$350.00) each as opposed to the alimony actually paid in the amount of seventy-eight thousand dollars (\$78,000.00). Accordingly, Tim Parker has overpaid alimony in the sum of fifty thousand seven hundred dollars (\$50,700.00) as of January 2018. Tim Parker therefore demands return of these overpayments or[,] alternatively, credit and or offset for these overpayments against any amounts allegedly owed in accordance with Plaintiff['s] Petition as well as against any future alimony obligation, if any, that the court may find he owes to Sharon Parker.

Appellant also argued that appellee had been unjustly enriched in the amount of \$18,850, or alternatively \$50,700, and that the amount should be repaid or at the very least used to offset any past and/or future obligations owed by him. He further claimed that his alimony obligation should be terminated or reduced. Appellee filed a response on May 15 denying the essential allegations of appellant's counterpetition.

A hearing took place on June 11. Appellee testified that she is employed as a music director at a church in Eureka Springs for which she receives a monthly compensation of \$500. She stated that she is on disability and receives \$729 a month. She testified that she does not have any other source of income and that she suffers a hardship when she does not receive her alimony. She said that she hired an attorney when appellant fell behind in his

alimony payments and that appellant subsequently paid \$2,000 to catch up. She stated that appellant was current as of January 5 but that he had not paid since that time. She said that a week after E.P. died, she received a check from appellant in the amount of \$1,000. She stated that appellant sometimes fell behind but that he “always” caught up. Over appellant’s objection, appellee testified that she “thought that if child support was terminated, it would revert to alimony, as part of the alimony and that it would increase to a thousand [dollars].” She said that by her calculations, appellant was \$5,000 behind and she wanted him to be held in contempt.

On cross-examination, appellee stated that her attorney had drafted the divorce decree and agreement. She testified that they did not negotiate for an alimony amount in the event E.P. died. She further stated that they opted not to address that contingency if she died before the age of eighteen. She acknowledged that she had received \$78,000 in alimony from appellant since E.P.’s death.

On redirect, appellee stated that at the time of the agreement, she did not contemplate that her then seven-year-old daughter might die.

Appellant testified that he is a practicing attorney who had been licensed since 1991. He said that since that time, he had handled at least a hundred domestic-relations cases. He admitted that appellee is disabled. He stated that his wife sent appellee the first alimony payment following E.P.’s death and that he had continued to pay appellee \$1,000 a month in alimony over the years. However, he contended that “alimony was set by agreement at \$350 per month” until E.P. graduated from high school. He said that he did not look at the decree and agreement until appellee filed the contempt petition, and that is when he realized that he had been paying appellee the increased alimony by mistake. He denied

owing appellee any amount greater than \$350 a month. He stated that if he could not recoup the overpayment, he wanted it to count against his future obligation. Appellant testified that child support stopped when E.P. died and that he was current on his child-support payments at that time.

After being called by appellant, appellee testified that she wanted the court to enforce the terms of the agreement.

The court made an oral ruling from the bench finding that it was the parties' intent to increase alimony when appellant's child-support obligation stopped. The court stated that the intent was clear considering what the parties did when E.P. died. The court declined to find appellant in contempt but ruled that he was five months behind or \$5,000 in arrears. The court ordered appellant to have the arrearage paid by October 11. The court granted appellee \$2,500 in partial attorney's fees. The court's final order was entered on July 6. In the order, the court found that appellant's obligation to pay child support terminated by operation of law when E.P. died on August 5, 2011. The court found that the agreement was ambiguous and that it was necessary to look at the parties' actions to determine their intent. It stated that based on the parties' actions following the death of E.P., the parties intended for alimony to increase when child support terminated. The court granted judgment against appellant in the amount of \$5,000 to be paid in full by October 11. The court found that appellant's counterpetition was moot and denied appellant's motion to terminate alimony. Appellant filed a timely notice of appeal on July 9.

We review domestic-relations cases de novo, but we will not reverse a circuit court's finding of fact unless it is clearly erroneous.<sup>1</sup> A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that the circuit court has made a mistake.<sup>2</sup> In reviewing a circuit court's findings of fact, we give due deference to the court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony.<sup>3</sup> Appellate courts will not defer to the circuit court on a question of law.<sup>4</sup> The circuit court's decision will be reversed if it erroneously applied the law and the appellant suffered prejudice as a result.<sup>5</sup>

A court has no authority to modify an independent contract that is made part of a divorce decree.<sup>6</sup> Alimony, in instances where there is an agreement, arises from a contract right, not an equitable right, through the system of justice.<sup>7</sup> While the agreement is still subject to judicial interpretation, we must apply the rules of contract construction in interpreting the agreement.<sup>8</sup> When a contract is unambiguous, its construction is a question

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<sup>1</sup>*Hunter v. Haunert*, 101 Ark. App. 93, 270 S.W.3d 339 (2007).

<sup>2</sup>*Id.*

<sup>3</sup>*Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008); *Blalock v. Blalock*, 2013 Ark. App. 659.

<sup>4</sup>*Jones v. Abraham*, 67 Ark. App. 304, 999 S.W.2d 698 (1999).

<sup>5</sup>*Emerson v. Linkinogger*, 2011 Ark. App. 234, 382 S.W.3d 806.

<sup>6</sup>*Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

of law for this court.<sup>9</sup> 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.<sup>10</sup> The parol-evidence rule is a rule of substantive law in which all antecedent proposals and negotiations are merged into the written contract and cannot be added to or varied by parol evidence.<sup>11</sup> When a contract is plain, unambiguous, and complete in its terms, parol evidence is not admissible to contradict or add to the written terms.<sup>12</sup> When the meaning of the words is ambiguous, parol evidence is admissible to explain the writing.<sup>13</sup> We are permitted to look outside the contract to determine the actual intent and conduct of the parties when an ambiguity exists.<sup>14</sup>

As his first point on appeal, appellant argues that the court erred as a matter of law in ruling that there was an ambiguity in the agreement. We agree. The parties' agreement in this case is unambiguous. Therefore, the parties' actions and conduct following E.P.'s death were irrelevant as was testimony concerning their intent at the time of the agreement when introduced as parol evidence. It is a well-settled rule in construing a contract that the intent of the parties is to be gathered, not from particular words and phrases, but from the whole

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<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Hagans v. Haines*, 64 Ark. App. 158, 984 S.W.2d 41 (1998).

<sup>12</sup>*Barnett v. Mountain View Sch. Dist.*, 2010 Ark. App. 333, 374 S.W.3d 851 (2010).

<sup>13</sup> *Pittman v. Pittman*, 84 Ark. App. 293, 139 S.W.3d 134 (2003).

<sup>14</sup>*Rockefeller v. Rockefeller*, 335 Ark. 145, 980 S.W.2d 255 (1998).



context of the agreement.<sup>15</sup> Based on the four corners of the agreement, it is clear that the parties intended for appellant's alimony to increase when child support terminated. The fact that child support terminated in a way unforeseen by the parties does not change appellant's obligation to pay appellee the increased alimony amount called for in the agreement. If, as in this case, the court reached the right result, we will affirm even if we disagree with the court's reasoning.<sup>16</sup> Accordingly, we affirm this point.

Appellant's other arguments are either moot or have no merit. Appellant's second and fifth arguments are moot in that we have already held that the agreement was not ambiguous and that the court reached the right result as it pertained to the amount of alimony appellant was required to pay after E.P.'s death. Appellant's third and fourth arguments have no merit. To the extent appellant claims that the court reformed or modified the agreement, he is mistaken. The court interpreted the agreement as written. And it retained jurisdiction to do so. Finally, the court's interpretation of the agreement led to its finding that appellant was currently \$5,000 in arrears at the time of the hearing and that appellee was entitled to partial attorney's fees. We find no error and affirm.

Affirmed.

GRUBER, C.J., and KLAPPENBACH, J., agree.

*Tim S. Parker*, pro se appellant.

*Sexton Law Firm*, by: *Jane Watson Sexton*, for appellee.

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<sup>15</sup>*Singletary v. Singletary*, 2013 Ark. 506, 431 S.W.3d 234.

<sup>16</sup>*Wedin v. Wedin*, 57 Ark. App. 203, 944 S.W.2d 847 (1997).