

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2008-TS-00874

WILLIAM PATRICK DALEY

APPELLANT

VS.

CHARLOTTE CARLTON

APPELLEE

**ON APPEAL FROM THE CHANCERY COURT OF
MADISON COUNTY, MISSISSIPPI**

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

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VS.

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court may calculate possible disqualification or recusal.

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Honorable Cynthia Brewer

Chancellor, Madison County Chancery Court



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STATEMENT OF ISSUE

- I. Whether the trial court was correct in finding that the Appellant/Defendant, was obligated, under the Property Settlement Agreement, to assume full responsibility for the debt on the marital home and that the Appellee/Plaintiff was entitled to receive the marital home free and clear of all indebtedness.

STATEMENT OF CASE

A. Procedural History

The parties herein were divorced by Judgment of Divorce entered by the Chancery Court of Madison County on April 27, 2004. At that time, a Property Settlement Agreement was entered into by the parties and incorporated into and as a part of the Judgment of Divorce.

On November 16, 2007, the Appellee filed her Motion for Interpretation of Property Settlement Agreement after the Appellant indicated for the first time that he would be unwilling to pay the balloon payment associated with the mortgage. The Appellant filed his response to said Motion on January 11, 2008. The Motion was heard by the Chancery Court on January 16, 2008. On March 4, 2008, the Chancellor issued an Order and Final Judgment determining that the language of the Property Settlement Agreement was unambiguous and that the Appellant was obligated to pay the balloon note.

The Appellant filed a Motion for Reconsideration of Opinion and Final Judgment on March 18, 2008 and said Motion was denied on May 2, 2008. On May 20, 2008, the Appellant filed a Notice of Appeal and on or about September 24, 2008, the Appellant filed his Appellant's Brief.

B. Statement of Facts

The parties were divorced on April 27, 2004. (R.E. 3-5). Prior to this date, the parties entered into a Property Settlement Agreement. (R.E. 6-13). The Agreement was drafted by an attorney retained by the Appellee. The Appellant had the opportunity to review the document and retain an attorney prior to signing the agreement. The Appellant chose not to retain an

attorney and signed the agreement on February 4, 2004. The Agreement was made a part of the Judgment of Divorce entered on April 27, 2004.

The property settlement agreement set out the terms of payment for the mortgage on the marital home. Specifically, the Agreement stated that "The Husband agrees to pay alimony to the Wife in the amount of Eight Hundred Ninety Eight (\$898.55) Dollars and Fifty-Five Cents, until such time as the mortgage on the property located at 309 Holley Lane is fully satisfied, said amount representing the amount of the monthly mortgage payment." (R.E. 8) The mortgage on the home is in the form of a balloon note, with the balloon payment due in May of 2008. The Appellant paid the specified mortgage payments until May of 2008. At that time, he discontinued payment and contended that the Agreement did not require him to pay the balloon payment, but rather his obligation in the Agreement was only to make payment up until the balloon payment came due.

The Appellee filed a Motion for Interpretation in order to clear up the Appellant's obligation to make such payment. The chancery court ruled in favor of the Appellee stating that the Property Settlement Agreement was unambiguous as to the Appellant's obligation to pay the entire amount of the mortgage balance as it existed at the time of the divorce, including the balloon payment. (R.E. 14-16). The Appellant filed a Motion for Reconsideration which was denied. Subsequently, the Appellant filed an appeal with the Supreme Court of Mississippi.

SUMMARY OF ARGUMENT

This appeal stems from a ruling by the Chancery Court of Madison County determining that the Property Settlement Agreement entered into between the parties herein is clear as to the Appellant's obligation to assume full responsibility for the mortgage debt on the marital home and to deliver the property to the Appellee free and clear of any indebtedness. The Appellant had appealed this decision arguing that the language in the Agreement is ambiguous as to his responsibility to pay off the mortgage debt completely and as a result, the Agreement should be interpreted in the manner in which he desires because the Agreement was prepared by an attorney retained by the Appellee.

Contract law states that the court should first look to the four corners of the agreement and examine the actual language used by the parties in the agreement. *D'Avignon v. D'Avignon*, 945 So.2d 401, 409 (Miss. Ct. App. 2006). When the instrument's substance is determined to be clear or unambiguous, the parties' intent must be effectuated. *Pursue Energy Corp. v. Perkins*, 558 So.2d 349, 352 (Miss. 1990). In the matter at hand, the language of the Agreement is clear. It states that "[t]he Husband agrees to pay alimony to the Wife in the amount of Eight Hundred Ninety Eight (\$898.55) Dollars and Fifty-Five Cents, until such time as the mortgage on the property located at 309 Holley Lane is fully satisfied["] (emphasis added). (R.E. 8). The Agreement further requires the Appellant to obtain a life insurance policy for the purpose of paying off the mortgage debt in the event of his death. (R.E. 8-9). This second obligation was understood by the Appellant as he did purchase such a policy after entering into the Agreement. (T.R. 19-20). As such, the language is clear in that the Appellant is obligated, under the Agreement, to pay the mortgage debt until fully satisfied, whether in life or in death. As the balloon payment is a part of the mortgage, the Appellant is required to make this payment as

well. Therefore, the chancery court's ruling should be affirmed and the Appellant should be required to pay off the mortgage debt on the marital home in full.

The Appellant also argues that as the language is ambiguous as to his obligation to pay off the mortgage debt, the Agreement should be interpreted in the manner in which he chooses because the Agreement was drafted by the Appellee's attorney. Although the law states that "[w]here the terms of a contract are vague or ambiguous, they should be construed more strongly against the party preparing it, *Banks v. Banks*, 648 So.2d 1116, 1121 (Miss. 1994), the Supreme Court has also state that "where the terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner." *Harris v. Harris*, 2007-CA-00873-SCT (Miss.) (citing *Tupelo Redevelopment Agency v. Abernathy*, 913 So.2d 278, 283 (Miss. 2005)). The evidence shows that the Appellant never mentioned to the Appellee that he did not intend to pay off the mortgage in full until the balloon payment was about to come due, several years after entering into the Property Settlement Agreement. (T.R. 17-19). Further, it is unreasonable for the Appellant to believe that he would be obligated to pay the mortgage debt in full if he died, but in life is only required to make payment until May of 2008 or until the balloon payment came due. Thus, to interpret the Agreement as the Appellant wishes would be interpreting it in an unreasonable manner.

Further, to allow an unrepresented a party to have a property settlement agreement interpreted as he desires, in the event of any ambiguity, would not favor judicial economy. It would essentially place a requirement on parties to a domestic suit to be represented by counsel in order to reach an agreement. This would have the effect of impeding proceedings even where the parties are ready and willing to reach an agreement.

For the reasons stated herein, the chancery court's ruling should be affirmed and the Appellant should be ordered to pay the mortgage debt in full and deliver the marital home to the Appellee free and clear of any indebtedness.

ARGUMENT

This appeal stems from a ruling by the Chancery Court of Madison County in which the court determined that the Property Settlement Agreement entered into by the parties herein was unambiguous as to the Appellant's obligation to assume full responsibility for the mortgage debt on the marital home and to deliver the marital home to the Appellee free and clear of any indebtedness. The Appellant argues that the Property Settlement Agreement is ambiguous as to such responsibility. He further argues that since the Agreement was drafted by an attorney retained by the Appellee and because the Appellant did not hire an attorney to review the Agreement, the language should be interpreted in the way that the Appellant desires.

I. Standard of Review

The standard of review of a determination of ambiguity, or the lack thereof, of a contract, and its subsequent interpretation is two-tiered. Whether a contract is ambiguous is a question of law which should be reviewed *de novo*. *Crisler v. Crisler*, 2006-CA-00933-COA (Miss.) (citing *Tupelo Redevelopment Agency v. Abernathy*, 913 So.2d 278 (Miss. 2005)). If an ambiguity is found to exist, its interpretation is a matter for the trier of fact which should be reviewed under a substantial evidence/manifest error standard. *Id.* Thus, the issue as to whether the trial court in this matter was correct in determining that the Property Settlement Agreement was unambiguous as to the Appellant's obligation to pay the entire mortgage, including the balloon payment, should be reviewed *de novo*.

II. The Property Settlement Agreement is Unambiguous as to the Appellant's Obligation to Assume Full Responsibility for the Mortgage on the Marital Home and Deliver the Home to the Appellee Free and Clear of All Indebtedness.

A property settlement agreement creates a contractual obligation, and therefore, the provisions of such an agreement must be interpreted according to contract principles.

D'Avignon v. D'Avignon, 945 So.2d 401, 409 (Miss. Ct. App. 2006). First and foremost, the court must look to the four corners of the agreement and examine the actual language used by the parties in the agreement. *Id.* If the language of the agreement is unambiguous, the court should not be concerned with what the parties may have meant or intended, for the language employed in a contract is the surest guide to what was intended. *Davis v. Davis*, 2006-CA-02161-COA (Miss). (citing *Iverson v. Iverson*, 762 So.2d 329, 335 (Miss. 2000)).

The language of the Property Settlement Agreement is clear as to the Appellant's obligation to pay the entire mortgage debt, including the balloon payment. The Agreement clearly states:

The Husband agrees to pay alimony to the Wife in the amount of Eight Hundred Ninety Eight (\$898.55) Dollars and Fifty-Five Cents, until such time as the mortgage on the property located at 309 Holley Lane is fully satisfied, said amount representing the amount of the monthly mortgage payment. Husband and Wife agree that any additional and/or pre-paid alimony paid by Husband to Wife is to be applied fully and solely to the mortgage balance, it being the intent of the parties that any funds paid over the regular monthly payment are for the purpose of accelerating the payoff of the mortgage debt. (emphasis added).

(R.E. 8). The Agreement explicitly states that the Appellant is to make payment to the Appellee until the entire mortgage debt is completely satisfied. The balloon payment is a part of the mortgage debt. Nowhere in the Agreement does it state that the Appellant is to make payment until May of 2008 or until the balloon payment comes due. Nor does the Agreement state that the Appellant is to pay all of the mortgage debt except for the balloon payment. Rather, the language is clear, that he is to make payment until the mortgage is fully satisfied.

To further emphasize his obligation to pay the entire mortgage, the Agreement goes on to state:

The Husband and Wife agree that each waives any and all claims in the other's life insurance plan, if any. Excepting that Husband agrees to provide a life insurance plan on his life specifically for the purpose of **paying off the balance of the mortgage on the property located at 309 Holley Lane** in the event of his death. Husband agrees that he will either obtain a separate term life insurance policy to accomplish this purpose or that he will retain Wife as primary beneficiary on his existing Northwestern Mutual policy number 8726767 and that Wife's status as primary beneficiary on either policy will be only as for such amount as is needed to satisfy the balance of the mortgage on the property located at 309 Holley Lane and that any excess benefits over that amount will be for the benefit of the beneficiary of Husband's choosing. (emphasis added).

(R.E. 8-9). Upon examination by the Court on January 16, 2008 the Appellant showed that he understood this obligation as he admitted that he had purchased a life insurance policy specifically for this purpose.

Q: On the document that you signed in 2004, you indicated that you would maintain life insurance. Have you still got your life insurance?

A: I do.

Q: And what is the amount of the life insurance in place?

A: The policy is \$150,000.

...

Q: And did you take that policy out after signing this document in 2004, or did you have it in place at the time?

A: No. It was gotten expressly for this purpose.

Q: In paragraph 6 of the divorce decree it says that you agree to provide a life insurance plan on your life specifically for the purpose of paying off the balance of the mortgage on the property located at 309 Holley Lane in the event of your death.

A: Right.

Q: Was that your agreement, sir?

A: Yes.

Q: And how much is still owed on the property, if you know sir?

A: The Holley Lane property is, I think, \$142,000. That was probably a few months ago, but that's roughly.

Q: So it's less than the \$150,000 life insurance?

A: Yes.

Q: And is Ms. Carlton still the primary beneficiary of the life insurance?

A: Yes.

(T.R. 19-20). The Appellant understood the fact that he was to secure life insurance sufficient to pay off the mortgage debt in the event of his death. However, he continues to argue that in life, he did not have an obligation to pay off entire the mortgage debt. Such reasoning is illogical and unreasonable. At best, this is a case of a mistaken interpretation of the Agreement on the part of the Appellant. In such cases, Mississippi courts have held that a mistaken interpretation on the part of one of the parties is not a justifiable reason to modify the settlement agreement. *Hopson v. Hopson*, 851 So.2d 397, 400 (Miss. Ct. App. 2003). As such, the Court below was correct in determining that the language of the Property Settlement Agreement was clear and unambiguous and that the Appellant is required to pay the entire mortgage debt on the marital property, including the balloon payment.

III. The Appellant's Argument That the Property Settlement Agreement Should Be Interpreted in the Manner in Which He Desires is Illogical and against Judicial Economy.

The Appellant further argues that because the Property Settlement Agreement was drafted by an attorney retained by the Appellee, the relevant terms should be interpreted in the manner in which he desires. As the relevant language in the Agreement was unambiguous, this point is not at issue and the Appellant's argument is irrelevant to this matter. However, in response to the Appellant's argument, the Appellee would show that although Mississippi law states that "[w]here the terms of a contract are vague or ambiguous, they should be construed more strongly against the party preparing it", *Banks v. Banks*, 648 So.2d 1116, 1121 (Miss. 1994), the Supreme Court has also state that "where the terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner." *Harris v. Harris*, 2007-CA-00873-SCT (Miss.) (citing *Tupelo Redevelopment Agency v. Abernathy*, 913 So.2d 278, 283 (Miss. 2005)). The manner in which the Appellant is construing the Agreement is unreasonable given the language of the Agreement and the testimony of the parties at the hearing on January 16, 2008. The Appellant admitted at the January 16, 2008 hearing that he had never mentioned to the Appellee that he did not intend to pay balloon note and that he would only make payment until May of 2008.

Q: Yet it's also your testimony that you met with your ex-wife in the summer of last year because she needed a plan?

A: At her request I met with her.

Q: At that time did you tell her it was your belief your obligation ended in May '08?

A: No.

Q: At any point did you tell her that your obligation ended in May of '08?

A: No, I did not.

...

Q: Again, at no point did you tell her – at no point did you tell her until the answer was filed that your belief was that your obligation ended in May of '08?

A: No.

(T.R. 17-19). If the Appellant intended, at the time of signing the Agreement, to only make payment until May of 2008 and to only partially pay off the mortgage debt on the marital home, he never made that clear to the Appellee. In fact, there is no evidence to show that this was his intention at the time of entering into the Property Settlement Agreement. Rather, all of the evidence shows that the Appellant, at the time of signing the Agreement, intended to pay off the mortgage debt fully. As noted above, the Agreement specifically stated that the Appellant was to make payments to the Appellee until the mortgage was fully satisfied and he was to take out a life insurance policy sufficient to pay off the mortgage debt in the event of his death. (R.E. 8-9). Further, the Appellant chose not to retain an attorney to review the Agreement to make sure that it conformed to his alleged intentions. Finally, the Appellant never stated or made known in any way that he had no intention of paying off the mortgage until the balloon payment was about to come due. (T.R. 17-19). Thus the reasonable interpretation of the Property Settlement Agreement is that the Appellant is obligated to pay the entire mortgage debt, including the balloon payment.

Further, to allow an unrepresented party to have a property settlement agreement interpreted as he desires, in the event of any ambiguity, would not favor judicial economy. The Mississippi Legislature and the courts have not, to date, placed a requirement on parties to a domestic suit to be represented by counsel as is the case in other types of suits, such as probate proceedings. However, to allow a strict interpretation of the law of contracts favoring the

CERTIFICATE OF SERVICE

I, Jeffrey B. Rimes, Attorney for the Appellee, do hereby certify that I have this day mailed, by United States Mail, a true and correct copy of the above and foregoing Brief of Appellee to:

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Honorable Cynthia Brewer
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This the 24th day of October, 2008.



JEFFREY B. RIMES