In Re Marriage of Culp
Lost in Translation?

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Not too long ago, my eighty-five year old great uncle had a revelation; "attorneys are to blame for all of society's problems." As much as I tend to disagree with the perspective that attorneys are the root of all evil, I must give him credit for realizing one thing; attorneys have the *unique* ability of being able to litigate nearly anything, or at least attempt to turn the perceivably simplest situation into a complex legal issue necessitating judicial intervention.

Take the recent case, *In Re Marriage of Culp*, 399 Ill.App.3d, 542. -- N.E.2d ---- (2010).[1] In this case, the Third District Appellate Court was charged with interpreting what the parties had intended in implementing the phrase "equally divided" into a provision of their settlement agreement. Sound silly? Perhaps to some, including my great uncle; yes. However, in taking a closer look at the parties diverging arguments in this case, I tend to disagree as to its pettiness.

In 1999, Petitioner-Appellant Jerry Culp ("Culp"), a master sergeant with the Illinois State Police filed for divorce from his former spouse, Susan. At the time of dissolution the parties entered into a settlement agreement which provided as follows:

> "[Culp] has certain retirement benefits through [SERS] which are valued at approximately $84,000 as of April 20, 1999, the date of entry of the [j]udgment of dissolution of marriage on grounds. Said retirement benefits shall be equally divided as of April 20, 1999, pursuant to a separate QILDRO to be entered by agreement of the parties or by order of the court."

Upon entering judgment for dissolution, the court reserved jurisdiction over the matter and directed Susan to make written application for entry of QILDRO prior to commencement of Culp's retirement.

Approximately ten years later, in January of 2009, Susan filed a motion for entry of a QILDRO. Culp objected to the proposed QILDRO and litigation over

[1] Given the fact that this case has not yet been published, formal citations have been omitted.

the matter ensued. On appeal the appellate court was faced with two issues[2] concerning the interpretation of the parties' marital settlement agreement.

The first issue raised by Culp concerned whether the proposed QILDRO, in allocating Susan a 50% share of Culp's pension at the time of his retirement, conformed to the parties' settlement agreement. As previously stated, the parties' settlement agreement stated "[s]aid retirement benefits shall be equally divided as of April 20, 1999." Culp contended that the language contained in this provision merely divided Culp's pension amount at the time of dissolution in 1999, and did not give Susan any entitlement to a portion of Culp's accrued pension amount ten years later. Not surprisingly, Susan disagreed as to Culp's interpretation and contended that she was entitled to 50% of Culp's full pension as of the date of his retirement in 2009. The court agreed with Susan's position.

It is well settled that in determining the parties intent, a court must first consider the language contained in the four corners of the contract. *See, Allton v. Hintzsche,* 373 Ill.App.3d 708, 870 N.E.2d 436, 439 (2007). When the agreement's terms are unambiguous, a court gives the documents language its plain meaning. *In re Marriage of Schurtz,* 382 Ill.App.3d 1123, 1125, 322 Ill.Dec. 400, 891 N.E.2d 415, 417 (2008). An agreement is unambiguous when it contains language susceptible to only one reasonable interpretation. *Allton,* 373 Ill.App.3d at 711Language is not ambiguous merely because the parties do not agree on its meaning. *In re Marriage of Wassom,* 352 Ill.App.3d 327, 331, 815 N.E.2d 1251, 1255 (2004).

In this case, the court held that the language contained in the settlement agreement was clear and unambiguous in nature. In reaching its conclusion the court pointed to the following rationale:

> -The settlement agreement never specifically allocated $42,000 in pension benefits to Susan. Had the parties intended such a method and amount of distribution, the agreement would have undoubtedly stated such.
> -Culp was a participant in a defined benefit pension plan. Defined benefit plans are cumulative in nature, where pension amounts are based on years of service and final salary amount. Given this make-

[2] In actuality, the appellate court was presented with an additional argument from Culp concerning lump-sum survivors benefits. However, given the fact that this argument was not raised at the trial court level, the appellate court ruled that this issue could not be raised for the first time on appeal and therefore had been forfeited. (citing *Arcor Inc. v. Hass,* 63 Ill.App.3d 396, 406, 842 N.E.2d 265, 274 (2005)).

> up, a participant's pension amount increases with time. Thus, the nature of Culp's pension is more congruent with Susan's interpretation than Culp's. Susan would receive no added benefit to waiting close to a decade to receive the settlement figure, whereas Culp would receive the interest accrued on that amount.
> -The settlement agreement provided that the trial court would retain jurisdiction over the matter. If Susan were only to receive $42,000 in Culp's pension benefits, this provision would be unnecessary.
> -In addition, the settlement agreement contained a provision calling for the entry of a separate QILDRO at a later date. There would be no need for this provision as well, unless the parties had intended to ascertain the value of Culp's pension at such a time.

As such, the court held, "[t]he only reasonable interpretation of the parties' settlement agreement is the parties knew the marital portion would grow in value during the period between the dissolution of marriage and Jerry's retirement and thus opted to wait to equally divide the pension until its value fully matured and became ascertainable."

Unrelentingly, Culp presented a second argument in favor of a more modest division of his pension benefits. Culp contended that the agreement neglected to allocate a specific method for calculating the division of benefits, and as such, the trial court erred in using the *Hunt* formula[3] to divide his pension benefits. Culp argued that it was impossible for the parties to have intended such method of division when the QILDRO provision under the pension code in 1999 gave no direction as to method of calculation, and accordingly the trial court erred in utilizing that formula.

In response, the appellate court was once again allocated the task of deciphering the parties' intent from the language contained in the marital settlement agreement. In drawing its conclusion that the *Hunt* formula was, in fact, the appropriate and applicable method for calculating the division of benefits the court noted the following:

> -The settlement agreement at issue contained explicit language directing trial court to divide the marital portion of the pension

[3] The *Hunt* formula calculates the marital portion in each pension payment with a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which benefits were being accumulated, the dominator being the total number of years (or months) during which benefits were accumulated prior to when paid. *See* 40 ILCS 5/1-119(n).

> "equally." The *Hunt* formula does just that, and as such, the language contained in the settlement agreement was not contrary to the customary formulaic approach.
> -The trial court reserved jurisdiction in contemplation of the entry of a QILDRO in the future. The entry of a QILDRO is necessary to direct the applicable governmental retirement to pay out benefits to someone other than pension holder
> -The settlement agreement failed to expressly enumerate another formula by which to equally divide the pension's marital portion.
> -Unlike in the case *In Re Marriage of Wenc*, 294 Ill.App.3d 239, 689 N.E.2d 424 (1998), the parties' settlement agreement did not "contain mysterious sums and a surplusage of ambiguous phrases." Rather, the settlement agreement specifically mandated an equal division of pension assets.
> -Contrary to Culp's belief, the *Hunt* formula was established in 1979. Its instillation into the Pension Code and endorsement by the General Assembly in 2006 was merely an acknowledgment of the formula's widespread acceptance.

Accordingly, the appellate court held that the trial court did not error in utilizing the *Hunt* formula.

Thus, as much as I do acknowledge we now live in a litigious society, I naturally have a tendency to disagree with the proposition that we attorneys are solely responsible for creating this "phenomenon." *In Re Marriage of Culp* provides a clear example of how the interpretation of a simple phrase can substantially impact the division of pension benefits. Had Culp been successful in his arguments, Susan would have received a fraction of what the appellate court held her to be entitled to. Accordingly, although I am of the inclination that the court reached the proper conclusion in this case, I nonetheless cannot go as far to say that the arguments presented by Culp were disingenuous.