

STATE OF MICHIGAN
COURT OF APPEALS

KURT L. SPAULDING,

Plaintiff-Appellee,

v

NINA F. BREWER-SHAPTON, f/k/a NINA F.
SPAULDING,

Defendant-Appellant.

UNPUBLISHED
February 10, 2011

No. 294933
Kalamazoo Circuit Court
LC No. 91-001827-DM

Before: OWENS, P.J., and MARKEY and METER, JJ.

PER CURIAM.

Defendant, Nina F. Brewer-Shapton, appeals by leave granted the trial court order denying her motion to set aside a qualified domestic relations order (QDRO) entered on the motion of her ex-husband, plaintiff Kurt Spaulding. We reverse and remand.

In 1993, plaintiff and defendant consented to a judgment of divorce. The judgment of divorce contained a section titled “Pension Rights and Retirement Benefits,” and this section provided for the entry of a QDRO. No QDRO was entered at the time of the divorce. However, in 2009 plaintiff moved the trial court to enter two QDROs pursuant to the “Pension Rights and Retirement Benefits” section of the judgment of divorce. Plaintiff requested one related to defendant’s pension plan and the other related to her 401(k) plan. Plaintiff believed the judgment of divorce awards him a portion of both defendant’s pension plan and her 401(k) plan. Defendant claimed the judgment of divorce awarded plaintiff only a portion of her 401(k) plan.

The goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). “Contracts must be construed so as to give effect to every word or phrase as far as practicable.” *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). If the language is clear and unambiguous, the contract must be interpreted and enforced as written. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999). A contract is ambiguous if “its provisions are capable of conflicting interpretations.” *Klapp*, 468 Mich at 467. The Court should interpret the words in a contract according to their ordinary meaning, and a dictionary may be used to determine the ordinary meaning of a word or a phrase. *Vushaj v Farm Bureau General Ins Co of Michigan*, 284 Mich

App 513, 515-516; 773 NW2d 758 (2009). The Court must not read words into a contract that are simply not there. *Terrien v Zwit*, 467 Mich 56, 75; 648 NW2d 602 (2002).

The dispute in this case is whether the “Pension Rights and Retirement Benefits” section of the consent divorce judgment awards plaintiff a portion of defendant’s pension plan in addition to her 401(k) plan. The first step in the analysis requires a determination of whether the language of the judgment is ambiguous, and we find that it was because the disputed language is subject to two reasonable interpretations. *Clapp*, 468 Mich at 467.

First, the section at issue uses generic, undefined terms to describe the assets it is distributing. For example, the first paragraph of the section reads:

It is further ordered and adjudged that a Qualified Domestic Relations Order should be entered relative to an assignment of retirement benefits to the Plaintiff/Counter-Defendant, pursuant this Judgment of Divorce. It further being noted that the Defendant/Counter-Plaintiff, **Nina F. Spaulding**, is and continues her employment with Eaton Corporation, Inc., whose address is P.O. Box 4013, Kalamazoo, Michigan, and through her place of employment, has maintained a 401K benefits plan which should be subject to a Qualified Domestic Order.

The parties dispute whether the use of the term “retirement benefits” in the first sentence can be interpreted to reference defendant’s pension plan or whether it is simply another way to refer to defendant’s 401(k) plan, specifically mentioned in the second sentence. The use of the language “retirement benefits” is ambiguous in the context of the judgment as a whole because it is not defined and is reasonably susceptible to more than one definition.

The use of an undefined term does not automatically render a contract ambiguous, and dictionary definitions may be used to determine the plain and ordinary meaning. *Terrien*, 467 Mich at 76; *Vushaj*, 284 Mich App at 515-516. However, in this case dictionary definitions do not alleviate the ambiguity because the real issue is whether the terms used in the judgment reference the pension plan and the 401(k) plan, or only the 401(k) plan. The section at issue is titled “Pension Rights and Retirement Benefits,” and despite referencing both a pension and retirement benefits in the heading, the entire disputed section alternates between specific mentions of the 401(k) plan, and references to “retirement benefits,” and references to “the Assigned Benefit,” the latter which is defined by reference to “the Plan” and “the Plan” is specifically defined as the 401(k) plan. It is entirely unclear whether “retirement benefits” references the 401(k) plan only, the pension plan only, the 401(k) plan and the pension plan, or some other retirement benefit. Because dictionary definitions do not assist in revealing the plain meaning of the terms and the term is undefined and open to more than one reasonable interpretation, the contract is ambiguous. *Clapp*, 468 Mich at 467.

We note that the use of the plural term “retirement benefits” suggests more than one benefit is at issue; however, the language of the agreement is not clear about what other benefits are being referenced throughout the section. The only benefit specifically identified in the judgment is defendant’s 401(k) plan. However, there is also a portion of the section ordering the distribution of “benefits,” including “pension, annuity, or retirement.” The judgment references “retirement benefits” and “alternate form of benefit,” without defining what specific asset or

assets these terms are meant to embody. Thus, it is reasonable to interpret the section as referring to more than simply the 401(k) plan when the section is read as a whole because the section uses language that suggests more than one asset is at issue. However, it is also reasonable to interpret the section as referring to only the 401(k) plan because it is the only benefit specifically identified by name.

We conclude that the language of the consent judgment is ambiguous because it is “subject to two reasonable interpretations,” and because of this ambiguity, “factual development is necessary to determine the intent of the parties.” *Alpha Capital Management, Inc v Rentenbach*, 287 Mich App 589; ___ NW2d ___ (2010). The trial court abused its discretion when it interpreted the judgment without an evidentiary hearing. In *Vigil v Vigil*, 118 Mich App 194, 199-200; 324 NW2d 571 (1982), the Court held that when parties enter into a consent judgment of divorce, an evidentiary hearing is necessary to determine the parties’ intent because the facts underlying the agreement are never before the trial court. The parties in this case negotiated the divorce judgment without the trial court’s participation; thus, an evidentiary hearing to determine the parties’ intent is necessary.

Plaintiff makes an alternative argument that even if the divorce judgment did not award plaintiff a portion of defendant’s pension plan, the trial court had the power to divide the pension plan because its absence is a correctable omission. We disagree. If the terms of the agreement are ambiguous, a trial court has “inherent power to interpret and clarify” the terms. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987). However, the trial court may only correct omissions to the extent that “no change in the substantive rights of the parties will result from the clarification.” *Id.* The addition of the pension plan to the judgment in this manner would substantially change the rights of the parties, and is thus impermissible. Plaintiff also relies on MCL 552.101(4) to argue that an interpretation omitting the pension plan from the judgment is impermissible because the law requires the divorce judgment to address all marital property. However, plaintiff’s argument has no merit because the requirement of MCL 552.101(4) does not apply to the trial court in this case. The parties entered into a consent judgment and the trial court was never responsible for dividing the assets of the parties. Parties are free to agree on a divorce judgment that does not distribute all the marital property. *Holmes*, 281 Mich App at 595.

Defendant also makes an alternative argument, maintaining that the trial court lacks authority to distribute a portion of her pension plan to plaintiff because the anti-alienation provisions of the Employee Retirement Income Security Act (ERISA), 29 USC 1056(d), bar the distribution of her pension without a valid QDRO. While defendant is correct that ERISA requires a proper QDRO, any order entered in this case would be proper if the trial court conducted an evidentiary hearing and found the judgment of divorce awards plaintiff a portion of defendant’s pension. See *Roth v Roth*, 201 Mich App 563, 567-569; 506 NW2d 900 (1993) (explaining that qualified domestic relations orders are specifically exempt from the anti-alienation provisions of ERISA).

Defendant also argues on appeal that the statute of limitations would bar the entry of a QDRO in this case because plaintiff waited 16 years before moving the court to enter any order. This issue was first raised in defendant’s motion for reconsideration, and was not addressed by the trial court before its initial ruling; therefore, it was not properly preserved for review. *Farmers Ins Exch v Farm Bureau Ins Co*, 272 Mich App 106, 117; 724 NW2d 485 (2006). A

“motion for rehearing or reconsideration must demonstrate a ‘palpable error by which the court and the parties have been misled.’” *Id.*, quoting MCR 2.119(F)(3). *Charbenau v Wayne Co Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). In *Charbenau*, this Court held “we find no abuse of discretion in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court’s original order.” *Id.* Similarly, in this case, there was no “palpable error” misleading the court to justify reversal on reconsideration based on a claimed violation of the statute of limitations. The statute of limitations violation is not based on new facts, and it could have been pled and argued before the trial court’s original order. The trial court did not commit palpable error or an abuse of discretion when it denied defendant’s motion for reconsideration, and we decline to further consider the issue.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Jane E. Markey

/s/ Patrick M. Meter