

STATE OF MICHIGAN
COURT OF APPEALS

PAULINE RUFF,

Plaintiff-Appellee,

v

LAQUETTA RUFF,

Defendant-Appellant,

and

OPERATING ENGINEERS' LOCAL 324
PENSION FUND,

Defendant.

UNPUBLISHED

July 24, 2014

No. 312559

Macomb Circuit Court

LC No. 2011-004627-CK

Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Defendant, Laquetta Ruff, appeals as of right from the trial court's order granting judgment for plaintiff, Pauline Ruff, and awarding her \$7,532.30, plus an additional \$521.08 per month through the remainder of defendant's life. We reverse and remand for entry of an order dismissing plaintiff's case.

I. FACTS AND PROCEDURAL HISTORY

In December 1989, the decedent, while married to defendant, retired and subsequently began receiving benefits from Operating Engineers' Local 324 Pension Fund, an ERISA-governed pension plan. The Pension Fund provided for surviving spouse benefits as follows:

SECTION 1.22—ELIGIBLE SURVIVING SPOUSE:

The term "Eligible Surviving Spouse" shall mean

a. the person who was married to the Employee Participant for at least one (1) year on his date of death, or

b. the person who was married to the Retired Employee Participant for at least one (1) year on his date of Retirement if she is still alive at the date of his death, or, if no such person exists, the person who was married to the Retired Employee Participant for at least one (1) year on the date of his death.

The decedent and defendant were divorced in 1993 and entered into a consent agreement, which was incorporated into a divorce judgment. The divorce judgment stated the following with regard to pension benefits:

PENSION BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED that each party is individually awarded his or her own interest that either party may have in any and to all of the following: any pension, annuity or retirement benefits; any accumulated contributions in any pension, annuity or retirement; or any right or contingent right in and to unvested pension, annuity or retirement benefits, any profit sharing plans or 401k plans.

The divorce judgment did not contain any specific words pertaining to surviving spouse benefits.

In 1997, the decedent married plaintiff, and in 2011, he executed a beneficiary election form awarding plaintiff “any death benefits” that he was entitled to from the Pension Fund. The form did not reference anything pertaining to surviving spouse benefits.

The decedent passed away shortly after executing the beneficiary form, and plaintiff received certain death benefits from the Pension Fund. Plaintiff also applied for monthly surviving spouse benefits, but the Pension Fund denied her request, stating that plaintiff was not the spouse at the time of the decedent’s retirement, as required by section 1.22. However, because defendant was the decedent’s spouse at the time of his retirement, the Pension Fund paid defendant monthly surviving spouse benefits of \$521.08.

Consequently, plaintiff filed the instant action against defendant, alleging breach of contract, promissory estoppel, and unjust enrichment, and sought declaratory relief and imposition of a constructive trust. Plaintiff argued that defendant waived all of her interest in the decedent’s pension benefits pursuant to the divorce judgment and she was therefore not entitled to receive the surviving spouse benefits. The trial court agreed, and determined that the language of the divorce judgment demonstrated a voluntary and intentional waiver of the pension benefits and defendant’s retention of those benefits constituted a breach of the divorce judgment. Accordingly, the trial court granted summary disposition for plaintiff, but only with regard to the breach of contract claim. Subsequently, the trial court entered on order of judgment for plaintiff, requiring defendant to pay plaintiff \$512.08 monthly in surviving spouse benefits and \$7,295.12 in back benefits, along with interest and costs. Defendant now appeals that order of judgment.

II. STANDARDS OF REVIEW

We review de novo a trial court’s decisions regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). “A motion under MCR 2.116(C)(10) test the factual sufficiency of the complaint.” *Id.* at 120. A court considers the

documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Id.*

Further, we review de novo the proper interpretation of a contract and the question of whether there is a contractual ambiguity. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). Contracts must be read as a whole, affording the terms their plain and ordinary meaning, to determine the parties’ intent. *Hasting Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). Unambiguous contractual language must be enforced as written. *Id.*

This issue also requires us to determine whether defendant waived her rights to the surviving spouse benefits in the divorce judgment. We review de novo the definition of waiver, but whether the facts constitute a waiver is a question of fact that we review for clear error. *Estate of Reed v Reed*, 293 Mich App 168, 173-174; 810 NW2d 284 (2011).

III. ANALYSIS

The trial court found that above-cited language in the divorce judgment regarding pension benefits constituted a waiver of defendant’s rights to the surviving spouse benefits. We disagree with this conclusion. The trial court appeared to interpret the language to provide that each party only be awarded his or her own interest in their respective retirement benefits. However, when given its plain and ordinary meaning, the language actually provides that the decedent and defendant were both entitled to “his or her *own* interest that either party may have in *any* . . . pension, annuity or retirement benefits . . . or *any* right or contingent right in and to unvested pension, annuity or retirement benefits.” (Emphasis added.)

In reaching its conclusion, the trial court relied on *Sweebe v Sweebe*, 474 Mich 151, 157; 712 NW2d 708 (2006); *Estate of Reed*, 293 Mich App at 168, and *MacInnes v MacInnes*, 260 Mich App 280, 286-287; 677 NW2d 889 (2004). The language of the divorce judgments in those cases specifically addressed the respective benefit plans of each individual, as opposed to “any” plan, and also provided that the rights to the benefit plans of each party are “free and clear from any claim by the other.” No similar language is contained in the divorce judgment between defendant and the decedent in the instant case.

Further, *Moore v Moore*, 266 Mich App 96; 700 NW2d 414 (2005), upon which plaintiff relies, is distinguishable as the applicable language from the divorce judgment there clearly established that any right the other party may have had in any retirement benefits, including contingent rights, “of the other party [were] hereby *extinguished* unless specifically preserved” in the divorce judgment or a “Qualified Domestic Relations Order.” *Id.* at 99 (emphasis added).

Although “[t]here is no magic language that must be included to effectively waive a person’s interest in plan proceeds,” *Sweebe*, 474 Mich at 157, unlike the language contained in the divorce judgments in the above-cited cases, the language of the divorce judgment in this case does not establish that defendant made an explicit, voluntary, and good faith waiver of her surviving spouse benefits, in that “a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question.” *MacInnes*, 260 Mich App at 287;

see also *Sweebe*, 474 Mich at 157; *Estate of Reed*, 293 Mich App at 175; *Moore*, 266 Mich App at 103.

This conclusion is buttressed by the fact that the divorce judgment between decedent and defendant did use language in other areas that actually reflected an intent to waive any rights to recovery of other future benefits or assets. Specifically, the divorce judgment provided that alimony “is forever barred,” and that “any rights of either party in any policy or contract of life . . . as beneficiary, are hereby extinguished” This language is similar to that provided in *Sweebe*, *Moore*, and *Estate of Reed*, and denotes a voluntary and explicit waiver of any rights in those benefits. The language pertaining to the pension benefits, however, differs in that it explicitly states that each party “is awarded his or her own interest that either may have in *any*” pension benefit, including any “contingent right” in unvested pension benefits. (Emphasis added.)

Based on the language of the Pension Fund, defendant was “*the person who was married to the Retired Employee Participant for at least one (1) year on his date of Retirement,*” and thus, is the eligible surviving spouse. And because the plain language of the divorce judgment does not establish a waiver, but instead establishes that defendant, as a party to the divorce, is entitled to the surviving spouse benefits, we conclude that the trial court erred by entering judgment for plaintiff. Therefore, we reverse the trial court’s grant of summary disposition and order of judgment for plaintiff and remand this case to the trial court for entry of an order dismissing plaintiff’s case in its entirety. Because our resolution of this issue is dispositive, we need not address the remaining issues raised in defendant’s appellate brief.

Reversed and remanded.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Karen M. Fort Hood