

STATE OF MICHIGAN
COURT OF APPEALS

CHARLENE LOUISE KNIGHT,

Plaintiff/Counter-Defendant-
Appellee,

v

RONALD THOMAS KNIGHT,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

October 14, 2003

No. 239100

Ogemaw Circuit Court

LC No. 99-652524-DO

Before: Donofrio, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals by leave granted, pursuant to the Supreme Court’s order of remand, an order granting plaintiff one-half interest in a disputed Keogh account. We reverse.

Defendant first argues that the consent judgment unambiguously stated the parties’ intention that retirement accounts would not be divided. We agree. Consent judgments are construed as contracts. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). We review de novo whether contract terms are ambiguous. *Rossow v Brentwood Farms*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

Here, the consent judgment unambiguously states that defendant retains all his interest in “any pension or retirement benefit” he independently holds. The Keogh account at issue unquestionably represents such a retirement benefit. Black’s Law Dictionary (7th ed)(defining “Keogh plan” as “a tax-deferred retirement program developed for the self-employed”). Nevertheless, plaintiff argues that the consent judgment contains a latent ambiguity arising from the fact that defendant held his Keogh account with Fidelity Investments, and Fidelity Investments maintained another jointly held investment account for the parties. Plaintiff argues that a separate provision of the consent judgment requires the couple to equally divide assets contained in certain investment accounts and one of the accounts listed there is “Fidelity Investment Funds.” So plaintiff argues that an ambiguity exists because the contract could reasonably require defendant to split both the Keogh account and the jointly held account that Fidelity Investments maintained.

But plaintiff’s position requires us to read the list out of context and ignore plain contract language that refers to the listed accounts as “jointly held funds” and again as “jointly held

property.” The parties do not dispute that defendant owned his Keogh plan outright. Therefore, the interpretation proffered by plaintiff would require us to ignore the “jointly held” language and create an inconsistency in our quest to find an ambiguity. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). We will not distort a contract’s plain language in such a way “to create an ambiguity where none exists.” *UAW-GM v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998).

Unless a contract contains an ambiguity, courts must apply the language as written without resort to extrinsic evidence of the parties’ intentions. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). An ambiguity exists if a contract reasonably supports separate, mutually exclusive interpretations. *Id.* Because the consent judgment here could not reasonably support the interpretation that defendant’s Keogh plan represented “jointly held property” rather than a “retirement benefit,” the trial court erroneously found an ambiguity where none exists. It follows that the trial court also erroneously relied upon parol evidence regarding the parties’ negotiations and unexpressed intent. *Id.*

We dispose of the remainder of defendant’s appellate issues by simply stating that defendant failed to present any evidence that would require the trial judge’s recusal or otherwise support a finding of wrongdoing on the judge’s part.

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

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O’Connell