

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALFRED HARTMAN PETERSON, III,

Plaintiff/Counter-Defendant-  
Appellant,

v

JANE E. PETERSON,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED  
April 18, 2013

No. 310798  
Livingston Circuit Court  
LC No. 08-003910-DO

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Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order denying his motion for reconsideration of the order requiring him to pay the premiums for defendant's long-term care insurance. We reverse.<sup>1</sup>

**I. FACTUAL BACKGROUND**

Plaintiff and defendant entered into a consent judgment of divorce on April 1, 2009, which approved, adopted, and incorporated the parties' Divorce Settlement Agreement (DSA), without merging it.<sup>2</sup> On December 5, 2011, defendant filed a motion to enforce the terms of the judgment and settlement agreement. Defendant claimed that before the parties divorced and until the fall of 2011, plaintiff had provided her with his work related benefit of long-term disability insurance coverage through Northwestern Long Term Care Insurance Company. She claimed that plaintiff ceased providing this coverage after his former employer had made the premium payments on her behalf.

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<sup>1</sup> While defendant again challenges this Court's jurisdiction, this issue has been resolved in our order on October 23, 2012, wherein this Court denied defendant's motion to dismiss for lack of jurisdiction.

<sup>2</sup> Pursuant to an agreement by the parties and on order of this Court, the DSA has been sealed and we will not disclose the contents in this opinion. The DSA also does not appear in the lower court file.

Plaintiff, however, contended that the DSA did not reference this long-term care coverage and it was not part of his Supplement Executive Retirement Plan (SERP) that was referenced in the DSA. In his affidavit, plaintiff stated that he was a former employee of Garden Street Group, he and defendant owned the long-term care policies in their individual names, and the company paid the premiums as a perk. Plaintiff also submitted an affidavit of Susan Hecker, an employee of a subsidiary of Garden Street Group, who stated that the long-term care coverage premiums were not part of plaintiff's SERP benefit or any other retirement benefit.

After a hearing on defendant's motion, the trial court entered an order that plaintiff was responsible for the continued payment of the premiums for defendant's long-term care insurance as if it was specifically identified in paragraph 2 of the DSA. Plaintiff filed a motion for reconsideration, which was denied. Plaintiff now appeals.

## II. STANDARD OF REVIEW

"A settlement agreement, such as a stipulation and property settlement in a divorce, is construed as a contract." *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004). The interpretation of a contract is a question of law reviewed de novo. *Johnson v QFD, Inc*, 292 Mich App 359, 364; 807 NW2d 719 (2011). We review factual findings for clear error. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 165; 719 NW2d 553 (2006) (quotation marks, citation, and brackets omitted).

## III. AGREEMENT

"Courts must uphold divorce property settlements reached through negotiation and agreement of the parties because modifications of property settlements in divorce judgments are disfavored." *Vittiglio v Vittiglio*, 297 Mich App 391, 399; 824 NW2d 591 (2012). The trial court in the instant case held that plaintiff was obligated to continue payment for the premiums of defendant's long-term care insurance "as if the Long Term Care Insurance benefit was identified specifically as a benefit in the Divorce Settlement Agreement, Paragraph 2. Non-Modifiable Section 71 Spousal Support." (Emphasis added). This was in error. Both parties agree that the DSA does not reference the payment of long-term care premiums. Yet, contrary to the plain language of the contract, the trial court read into the DSA an agreement pertaining to the long-term care insurance. This violates the long-standing principle that "property-settlement agreements are enforceable and . . . a court is bound by the terms of the agreement in the absence of fraud, duress, mutual mistake, or severe stress that prevented a party from understanding in a reasonable manner the nature and effect of the act in which he or she was engaged." *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114 (2011).

Moreover, while the DSA refers to defendant's rights to SERP benefits, the only evidence in the lower court demonstrates that the long-term care insurance benefit was not part of the SERP benefit. Hecker, an employee of a subsidiary of Garden Street Group, clearly stated in her affidavit that the long-term care coverage premiums were not part of plaintiff's SERP benefit or any other retirement benefit. Defendant offered nothing at the trial court level in

support of her claim.<sup>3</sup> The only evidence offered shows that the long-term care insurance was not included in the SERP. Thus, we find that the trial court clearly erred in its holding.

#### IV. CONCLUSION

The trial court erred in reading into the DSA a provision for long-term insurance care. We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering

/s/ Patrick M. Meter

/s/ Michael J. Riordan

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<sup>3</sup> Contrary to defendant's assertions, the email plaintiff sent reveals that based on his understanding, the long-term care insurance benefit was not included in the DSA.