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# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001239-MR

BRYNDA ENGLE

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE JEFFREY M. WALSON, JUDGE  
ACTION NO. 96-CI-00626

ROGER DALE LENNINGTON

APPELLEE

OPINION  
REVERSING

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BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

TACKETT, JUDGE: Brynda Engle (formerly Lennington) appeals from the decision of the Madison Family Court interpreting the separation agreement with her former spouse Roger Dale Lennington. The family court held that the agreement was ambiguous, and admitted parol evidence to support Roger's

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

preferred interpretation of the agreement. Based on that evidence, the court held that the agreement should be interpreted to limit Brynda's share of Roger's pension to 44% of the face value of the benefits on the date of the decree. We hold that the court erroneously categorized the agreement as ambiguous and reverse.

The parties entered into the separation agreement on January 20, 1997. In pertinent part, the agreement provided that Brynda would receive:

A cash payment from husband, equal to the value of forty-four percent . . . of the net present value of the husband's pension as of the date of the divorce decree herein; such payment shall be made upon Petitioner receiving her undergraduate degree.

As early as 1999, Brynda sought guidance from the courts to establish the net present value of the pension; at the same time, Roger sought to establish that the agreement referred to the face value of the pension at the time of the decree, which was entered in March of 1997. Brynda received her undergraduate degree in 2002, triggering her eligibility for her portion of Roger's pension. This issue was not decided by the courts until 2004, when the Madison Family Court held a hearing and decided that the terms of the agreement were ambiguous, allowing Roger to introduce extrinsic evidence. Based on that evidence, the court concluded that the term "net present value" meant the face

value of the pension at the time of the decree. This appeal followed.

Whether an agreement is ambiguous is a question of law to be decided by the court, and a lower court's ruling is entitled to no deference on appeal. First Commonwealth Bank of Prestonsburg v. West, 55 S.W.3d 829 (Ky. App. 2000). Reviewing the language in question, we hold that the court erroneously decided that the agreement was ambiguous.

A separation agreement is a contract, and is subject to the law governing interpretation of contracts. Terms in a contract are given their ordinary meaning whenever possible, and their context must be considered in determining their meaning. National Union Fire Ins. Co. v. Hendrix, 337 S.W.2d 875 (Ky. 1960). The court below held that while the term "net present value" had a definite meaning that a trained person would understand, a layperson may think it meant something different, and therefore, the court reasoned, it was ambiguous. This is not a correct application of the law. In the context of division of pension benefits, "net present value" has a distinct and definite meaning. A contract's language is considered ambiguous only when it is capable of more than one reasonable interpretation. Transport Ins. Co. v. Ford, 886 S.W.2d 901 (Ky. App. 1994). Here, both parties were represented by counsel during the course of the negotiation. It may be true that a

layperson would guess that "net present value" means the present account balance, but this situation is not one where a layperson's understanding should apply. A professional, practicing in the context of domestic relations law, should be on notice that "net present value" has a technical meaning, as an examination of Graham and Keller's Domestic Relations Law §15.29-30 would reveal. Under these circumstances, it was error for the court to hold that the contract was ambiguous simply because an untrained person might have an incorrect understanding of a technical term. Therefore, it was also error for the court to consider extrinsic evidence and to apply a different interpretation of the contract from the ordinary, technical meaning of "net present value" in dividing Roger's pension. Armstrong v. Armstrong, 34 S.W.3d 83, 84, (Ky. App. 2000) In re Marriage of Hunt, 909 P.2d 525, 531 (Co. 1995). On remand, the Madison Family Court must determine the net present value of Roger's pension at the time of the decree, relying on expert testimony to establish that figure.

For the foregoing reasons the judgment of the Madison Family Court is reversed and this case is remanded for proceedings consistent with this opinion.

ALL CONCUR.

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