

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00584

September Term, 2016

WANDA HILL

v.

MARLENE HILL

Meredith,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: May 22, 2017

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Marlene Hill (“Marlene”), appellee, and Wesley Allen Hill, Sr. (“Wesley Allen”) were married in March 1958, and later purchased residential property in Denton, Maryland. They held title to the property as tenants by the entireties. On July 14, 2009, Marlene and Wesley Allen separated, and then executed a Voluntary Separation and Property Settlement Agreement. The couple never divorced. Wesley Allen passed away on August 8, 2014, and Marlene survived him. One of the bequests in Wesley Allen’s will purported to leave his interest in the Denton property to the couple’s daughter, Wanda Hill (“Wanda”), appellant. Wanda filed suit in the Circuit Court for Caroline County seeking a declaration that she was entitled to a one-half interest in the Denton property by virtue of the Voluntary Separation and Property Settlement Agreement. The circuit court granted summary judgment in favor of Marlene. Wanda appealed, and urges us to reverse the circuit court’s holding that the Voluntary Separation and Property Settlement Agreement terminated upon the death of Wesley Allen pursuant to the Agreement’s Duration clause (which said the agreement was binding “for the duration of [the] joint lives” of Wesley Allen and Marlene), and that Marlene therefore became the sole owner of the property upon Wesley Allen’s death.

QUESTION PRESENTED

Wanda presents a single question for our review:

Under Maryland law, can a surviving spouse be awarded ownership of a marital property by theory of tenancy by the entireties after she had agreed to sell the property and to release all future claims and awards in a property settlement agreement?

For the following reasons, we will affirm the judgment of the Circuit Court for Caroline County.

FACTUAL & PROCEDURAL BACKGROUND

Marlene Hill and Wesley Allen Hill, Sr., were married on March 15, 1958. Wesley Allen, now deceased, was Wanda Hill's father. In 1988, Marlene and Wesley Allen purchased residential property at 8619 Mitchell Road, Denton, Maryland (the "Property"). Marlene and Wesley Allen held title to the Property as tenants by the entirety, and the deed was recorded among the land records of Caroline County.

In July 2009, Marlene and Wesley Allen separated. On July 14, 2009, they executed a Voluntary Separation and Property Settlement Agreement (the "Agreement"). The Agreement contains three provisions of particular relevance to the parties' contentions in this appeal. The first is the "Real Property" provision, which contemplated a sale of the Property at some unspecified time in the future, and states:

The parties own improved real estate in Caroline County, Maryland: (located at 8619 Mitchell Road, Denton, Maryland 21629), assessed at \$251,196.00, deed reference Liber FDM 235 folio 314, and encumbered by a mortgage and home equity loan with current principal balances of approximately \$30,000.00 and \$50,000.00 respectively. It is the parties' intention that the marital home be placed on the market for sale with a realtor of Husband's choice with a sale price of no less than \$300,000.00 and upon settlement and payment of the outstanding mortgage and home equity line of credit, the net proceeds shall be divided equally between the parties.

The second is the "Release of Marital and Estate Rights" provision, which states:

Each party releases the other and the other's successors in interest from all current and future claims arising out of their marriage, not otherwise reserved in this agreement. This release includes, but is not limited to, any claim or award arising under Maryland Code, Family Law Article Title 8-

201 [et seq.] and/or any amendment thereto, and any court decision or opinion thereunder, and any claim against the other or against his or her property by virtue of any future change of the law of the State of Maryland subsequent to the execution of this agreement concerning marital rights or property rights, whether the change results from legislative enactment, judicial pronouncement, or executive order, whether it be in this State or any other jurisdiction. **This release includes, but is not limited to, the use of the family home, the use of family property**, monetary awards, the right to receive support or alimony, **the right to take from the probate estate of the other, whether testate or intestate**, and the right to be appointed personal representative.

(Emphasis added.)

The Agreement also contains a “Duration” clause, which states: “**DURATION. The provisions of this agreement shall survive any future divorce and shall be binding on the parties for the duration of their joint lives.**” (Emphasis added.)

Following the execution of the Agreement in July 2009, Wesley Allen lived at the Property until his death on August 8, 2014. Marlene and Wesley Allen never divorced. The Property was never retitled or sold. Wesley Allen’s will contained a bequest leaving “all of my right, title and interest” in the Property to Wanda. The validity of Wesley Allen’s will and the Agreement are not contested in this appeal, but the effect of the Agreement upon Wesley Allen’s interest in the Property is disputed. Marlene takes the position that, upon Wesley Allen’s death, the Property became hers alone by operation of law. Maryland law is clear that, although a divorce will sever a tenancy by the entireties, the execution of a separation agreement does not. *Bruce v. Dyer*, 309 Md. 421, 438 (1987).

On December 23, 2014, Wanda filed a complaint for declaratory relief in the Circuit Court for Caroline County. In her complaint, Wanda asked the circuit court for a

declaration that she was entitled to one-half of the net proceeds from the sale of the Property should it be sold in the future. Wanda contended that she was entitled to such a declaration pursuant to Wesley Allen's will and the Real Property provision of the Agreement, which Wanda asserted was binding and enforceable despite Wesley Allen's death.

On March 18, 2015, Marlene filed a motion to dismiss or, in the alternative, for summary judgment. In her motion, Marlene contended that neither Wanda nor Wesley Allen's estate had any interest in the Property, and therefore, Wanda was not entitled to any potential proceeds from a future sale of the Property. On April 6, 2015, Wanda filed an opposition to Marlene's motion, as well as a cross-motion for summary judgment.

On June 24, 2015, the circuit court held a hearing on the parties' cross-motions for summary judgment. That same day the circuit court denied both motions for summary judgment.

On April 25, 2016, Wanda renewed her motion for summary judgment, and filed a motion *in limine* to (1) preclude Marlene from testifying because she was barred by Maryland's Dead Man's Statute, and (2) preclude an attorney from testifying as Marlene's expert witness regarding the meaning of certain terms in the Agreement. On May 6, 2016, Marlene renewed her motion for summary judgment.

A hearing on motions was held in the circuit court on May 11, 2016, and, after hearing argument from the parties, the circuit court rendered decisions on the pending motions. The circuit court granted Wanda's motion *in limine* precluding Marlene's expert

from testifying. But the circuit court then granted summary judgment in favor of Marlene.

The circuit court explained its holding as follows:

. . . the language that this Court has to interpret is in the duration clause[;] it says the provisions of this Agreement shall survive any future divorce ah, and shall be binding on the parties for the duration of their joint lives. . . . [T]he Court in order to resolve this case has to decide what the duration language means. Now, ah, I've looked at all the authorities cited um, and I've also looked at the entire Agreement, because I think the entire Agreement has to be interpreted in as consistent [a] manner as possible. So, I'm not just interpreting. . . this cause in the abstract, but I'm, I'm also interpreting it in light of the remaining . . . remainder of the Agreement. The Court concludes that even though there is no binding precedent interpreting what ["joint lives"] quote, unquote means in the context of this Agreement. I'm persuaded that the common language of the Agreement of the term joint lives ah, can only be interpreted as the lives of both parties, while they are both living. And not some divisible arrangement. Um, Black's Law Dictionary while it's hardly a binding ah, precedent of any kind is nonetheless at least persuasive that ah, I think the language that Black's uses is as follows[:] -- joint lives the expression is used to designate the duration of a . . . of an estate or a right which is granted to two or more persons to be enjoyed as long as they both ah, or still shall live. As soon as one dies the interest determines. So, I think that the only reasonable interpretation of this language is that this Voluntary Separation and Property Agreement although hardly a model of clarity in some ways, and clearly in hindsight the parties' intent could have been more artfully stated. Nonetheless **I think it's reasonably clear to the Court that the intent of the parties was that this was not a fait accompli, that as far as the disposition of the real estate was concerned. It was a statement of the intent of the parties to be implemented at some point in the future, should either party [choose] to do so. Otherwise I can't find any way to reconcile ah, that the language, other than it was sort of an Agreement to agree on acts to be done in the future. . . . The fact of the matter is, I think that the rights under this Agreement terminated with the death of the husband. And therefore ah, since legal title never passed and this Agreement in effect became void or non-binding in this Court's view at the death of the husband.**

(Emphasis added.)

On May 24, 2016, Wanda appealed. The circuit court's written order granting Marlene's motion for summary judgment was entered June 30, 2016. Pursuant to Maryland Rule 8-602(d), Wanda's notice of appeal "shall be treated as filed on the same day as, but after, the entry [of the judgment] on the docket."

STANDARD OF REVIEW

Motions for summary judgment are governed by Maryland Rule 2-501. Rule 2-501(f) states that the circuit court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law."

The standard of appellate review we apply when reviewing a circuit court's granting of summary judgment is the *de novo* standard of review:

A circuit court's decision to grant summary judgment is reviewed *de novo*. *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 657, 51 A.3d 51 (2012). We must determine whether there was "a genuine dispute of material fact on the summary judgment record" and "whether the party that obtained summary judgment was entitled to judgment as a matter of law." *Id.*

Reiner v. Ehrlich, 212 Md. App. 142, 151 (2013) (internal quotation omitted).

The Court of Appeals has noted that "[t]he existence of a dispute as to some non-material fact will not defeat an otherwise properly supported motion for summary judgment, but if there is evidence upon which the jury could reasonably find for the non-moving party or material facts in dispute, the grant of summary judgment is improper."

Okwa v. Harper, 360 Md. 161, 178 (2000); *see also Danielewicz v. Arnold*, 137 Md. App. 601, 612–13 (2001).

The Court of Appeals has also explained that we apply the *de novo* standard of review when reviewing a circuit court’s interpretation of a contract:

Contract interpretation, including the determination of the ambiguity of a contract, is a question of law and subject to *de novo* review. *Towson University v. Conte*, 384 Md. 68, 78, 862 A.2d 941, 946 (2004) (citing *Sy-Lene v. Starwood*, 376 Md. 157, 163, 829 A.2d 540, 544 (2003)). . . . Courts in Maryland follow the law of objective interpretation of contracts, “giving effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean.” *Towson University v. Conte*, 384 Md. at 78, 862 A.2d at 946–47.

[“][W]hen the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. Consequently, the clear and unambiguous language of an agreement will not give away to what the parties thought that the agreement meant or intended it to mean.[”]

Id. at 78, 862 A.2d at 947. A contract is ambiguous if, “when read by a reasonably prudent person, it is susceptible of more than one meaning.” *Calomiris v. Woods*, 353 Md. 425, 436, 727 A.2d 358, 363 (1999) (citations omitted). Determining whether language in a contract is susceptible to more than one meaning requires an examination of “the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution” *Id.* (quoting *Pacific Indem. v. Interstate Fire & Cas.*, 302 Md. 383, 388, 488 A.2d 486, 488 (1985)).

United Servs. Auto. Ass’n v. Riley, 393 Md. 55, 79–80 (2006).

DISCUSSION

The parties' contentions in this appeal largely revolve around the meaning of the Agreement's Duration clause vis-à-vis the Real Property clause, Release of Marital and Estate Rights clause, and the Agreement as a whole. Wanda contends that, assuming we find the Agreement to be unambiguous, as the circuit court did, "[w]hen the language of the [Agreement] is given its plain meaning and read as a whole in a manner that harmonizes the contracting parties' intent, it is clear the contracting parties intended for the [Agreement] to have a character of finality; the parties did not intend for [Marlene] to have the ability to inherit an additional award," *i.e.*, the Property. Wanda asserts that the Release of Marital and Estate Rights clause can "essentially" be read as a finality clause, and that the Agreement was intended to result in a final division of assets among Marlene, Wesley Allen, and their successors in interest such as Wanda.

Marlene contends that the circuit court was correct in holding that the Agreement was unambiguous, and that the Duration clause rendered the Agreement non-binding upon Wesley Allen's death. Marlene asserts that the meaning of the term "joint lives" in the Duration clause is unambiguous, and therefore, the death of either Wesley Allen or Marlene would have terminated the Agreement. Marlene posits that, had she died before Wesley Allen, he would have become the sole owner of the Property, and Wanda would have inherited the Property pursuant to the bequest in Wesley Allen's will. But, because the Agreement was binding only during the joint lives of Wesley Allen and Marlene, his estate no longer held any title or other interest in the Property after his death.

A. The Agreement is Unambiguous

We review *de novo* whether the circuit court correctly held that the Agreement is unambiguous. *Towson University v. Conte*, 384 Md. 68, 78 (2004). “The language of a contract is only ambiguous if, when viewed from [a] reasonable person perspective, th[e] language is susceptible to more than one meaning.” *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 87 (2010).

The parties disagree regarding the meaning and impact of the Agreement’s Duration clause, and whether the Agreement terminated upon the death of Wesley Allen. As outlined above, the Duration clause of the Agreement states: “The provisions of this agreement shall survive any future divorce and **shall be binding on the parties for the duration of their joint lives.**” (Emphasis added.) Black’s Law Dictionary defines “joint lives” as follows: “This expression is used to designate the duration of an estate or right which is granted to two or more persons to be enjoyed so long as they both (or all) shall live. As soon as one dies, the interest determines.” BLACK’S LAW DICTIONARY 838 (6th ed. 1990).¹

Although this definition of joint lives is not binding upon this Court, it is persuasive. *See Chow v. State*, 393 Md. 431, 445 (2006) (“[I]t is proper to consult a dictionary or dictionaries for a term’s ordinary and popular meaning.”).

It appears that Maryland courts have analyzed the term “joint lives” primarily in the context of alimony payments in divorce proceedings. Most cases provide no express

¹ The sixth edition appears to be is the most recent edition of Black’s Law Dictionary to provide a definition for “joint lives,” and we infer that the circuit court found the definition in that edition persuasive, as do we.

definition of the phrase. But, in *Knabe v. Knabe*, 176 Md. 606, 612 (1939), the Court of Appeals explained that “[a]limony is a money allowance payable under a judicial decree by a husband at stated intervals to his wife, or former wife, **during their joint lives** or until the remarriage of the wife, so long as they live separately, for her support and maintenance.” (Emphasis added.) The Court further explained that “[i]n **the case of death of one of the parties**, the remarriage of the wife, or their mutual consent to live together[,] alimony ceases.” *Id.* at 613 (emphasis added) (internal quotation omitted). Although *Knabe* does not provide an express definition of “joint lives,” it is clear that the Court of Appeals contemplated that an obligation to make payments “during their joint lives” terminates upon the death of one of the parties subject to the alimony agreement.

This Court adopted a similar view of the term “joint lives” more than three decades later in *Simpson v. Simpson*, 18 Md. App. 626, 628 (1973) (superseded on unrelated statutory grounds in *Shapiro v. Shapiro*, 346 Md. 648 (1997)). In *Simpson* we explained:

1. Alimony is a money allowance payable under a judicial decree by a husband at stated intervals to his wife, or former wife, **during their joint lives** or until the remarriage of the wife, so long as they live separately, for her support and maintenance.

a. It must terminate on the remarriage of the wife.

b. It must terminate on the death of the wife.

c. It must terminate on the death of the husband.

d. If the parties have entered into an agreement providing for payments which meet the required characteristics of alimony, the court may adopt the agreement in ordering the payment of alimony.

e. Alimony ordered by the court is always subject to reconsideration and modification by the court in the light of changed circumstances.

f. Payment of alimony may be enforced by the court by the exercise of its contempt power, including attachment and imprisonment of the person.

Id. at 628–29 (emphasis added) (footnote omitted); *see also LaChance v. LaChance*, 28 Md. App. 571, 575 (1975) (quoting *Simpson* for the same proposition).

We recently reinforced this understanding of “joint lives” in *Morris v. Goodwin*, 230 Md. App. 395, 405 (2016), where we explained:

Having decided that a marriage based on fraud is voidable, the next questions raised are when and by whom may a suit for an annulment of such marriage be brought? This Court has answered the first question by stating in *dicta* that voidable marriages may only be challenged while the married parties are still alive. *See [Picarella v. Picarella*, 20 Md. App. 499, 507–08 (1974)] (“‘Voidable’ expresses the idea that the defect, at most, subjects the marriage to direct attack under appropriate procedure **during the joint lives of the parties.**”). It follows then that no action for an annulment of a voidable marriage for fraud can be brought **after the death of one of the parties to the marriage.**

(Emphasis added.)

We are satisfied that the phrase “joint lives” is an unambiguous term and subject to only one reasonable meaning. When parties enter into a contract that is expressly agreed to be binding during their “joint lives” --- in the absence of an agreement for terms to be binding on their successors, heirs, and assigns, or an express agreement for an obligation to continue after the death of one of the parties --- they are agreeing that the contractual obligations will terminate upon the first death of one of the contracting parties. Here, the Agreement’s Duration clause states that the “provisions of this agreement shall survive any future divorce and shall be binding on the parties **for the duration of their joint lives.**” (Emphasis added.) The Duration clause’s language clearly provides that the Agreement will not survive -- *i.e.*, it will terminate -- upon the death of either Marlene or Wesley Allen,

whichever comes first. Wanda does not offer any alternative explanation as to what the Duration clause means.

B. Summary Judgment Was Proper

As noted, we review *de novo* whether the circuit court's granting of summary judgment was proper. *United Servs. Auto. Ass'n, supra*, 393 Md. at 79–80. Wanda contends that summary judgment was improper because the Duration clause is merely “boiler plate property settlement language that makes zero sense in connection with the other provisions” of the Agreement. Wanda asserts that, “[w]hatever the Duration Clause means,” we should simply disregard that clause in light of the Real Property and Release of Marital and Estate Rights clauses, and hold that the Agreement remained binding after Wesley Allen's death. She contends that the circuit court's granting of summary judgment in favor of Marlene was an error.

Our rules of contract construction mandate that, “unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation.” *Ocean Petroleum, Co., supra*, 416 Md. at 86. “[E]ffect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed.” *Clancy v. King*, 405 Md. 541, 557 (2008) (internal quotation omitted). “[W]hen the language of the contract is plain and unambiguous[,] there is no room for construction, and **a court must presume that the**

parties meant what they expressed.” *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985) (emphasis added).

As discussed above, the Duration clause of the Agreement is unambiguous. We therefore presume the parties meant what is expressed in the Agreement, and we do not seek to determine what the parties subjectively intended the Agreement to mean. *See Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 448 (2008) (“If a contract is unambiguous, the court must give effect to its plain meaning and not contemplate what the parties may have subjectively intended by certain terms at the time of formation.”); *Maslow v. Vanguri*, 168 Md. App. 298, 318 (2006). (“A court will presume that the parties meant what they stated in an unambiguous contract, without regard to what the parties to the contract personally thought it meant or intended it to mean.”). Accordingly, we will interpret the Agreement by giving effect to its express terms, and we will not attempt to discern what the parties subjectively intended when they entered into the unambiguous Agreement.

Wanda contends that the circuit court’s interpretation of the Duration clause renders the Release of Marital and Estate Rights clause meaningless, and because of this, the Duration clause should not be enforced. But we conclude that the Duration clause can be harmonized with the rest of the Agreement. The Agreement was binding upon the parties so long as both of them lived, and, if the parties had sold the Property while they were both alive, they would have split the net proceeds. However, the Property was never sold, and once Wesley Allen died, the Agreement ceased to be binding on the parties. There is no

indication that Marlene ever acted contrary to the Release of Marital and Estate Rights clause; she did not need to assert a claim against Wesley Allen's probate estate because she became sole owner of the Property by operation of law upon his death.

Wanda urges us to look beyond this plain language and delve into "the contracting parties' intent." But, as stated above, our cases on contract interpretation mandate that, "[i]f a contract is unambiguous, the court **must give effect to its plain meaning and not contemplate what the parties may have subjectively intended . . .**" *Nova Research, Inc., supra*, 405 Md. at 448 (emphasis added). Giving effect to the plain meaning of the Duration clause, it is clear that the Agreement was meant to continue only for the duration of Marlene and Wesley Allen's joint lives, and that it would therefore terminate upon the death of the either Marlene or Wesley Allen, whichever occurred first.

We hold that the circuit court did not err in granting summary judgment in favor of Marlene. The Agreement terminated upon the death of Wesley Allen on August 8, 2014, pursuant to the Duration clause. The Property was titled as tenants by the entireties at the time of Wesley Allen's death, as the Property had been since it was purchased in 1988. Wesley Allen and Marlene had never obtained a divorce. Therefore, upon Wesley Allen's death, Marlene became sole owner of the Property by operation of law, and neither Wesley Allen's estate nor legatees under Wesley Allen's will held or acquired any interest in the Property following Wesley Allen's death.

**JUDGMENT OF THE CIRCUIT
COURT FOR CAROLINE COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**