

IN THE COURT OF APPEALS OF MARYLAND

No. 123

September Term, 1995

DEBRA L. SHAPIRO

v.

DAVID L. SHAPIRO

* Murphy, C.J.,
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker,
JJ.

Dissenting Opinion by Eldridge, J.,
in which Raker, J., joins.

Filed: July 29, 1997

*Murphy, C.J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the adoption of the opinion.

Eldridge, J. dissenting.

The majority's interpretation of Maryland Code (1984, 1991 Repl. Vol.), § 8-103 of the Family Law Article, contradicts the plain language of the statute and presents numerous problems. Furthermore, the majority's interpretation is inconsistent with the history and legislative policy concerning judicial modification of alimony and spousal support agreements.

(1)

Section 8-103 of the Family Law Article states as follows:

"§ 8-103. Modification of deed, agreement, or settlement.

"(a) *Provision concerning children.* - The court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child.

"(b) *Exception for provision concerning support of spouse.* - The court may modify any provision of a deed, agreement, or settlement with respect to spousal support executed on or after January 1, 1976, regardless of how the provision is stated, unless there is a provision that specifically states that the provisions with respect to spousal support are not subject to any court modification.

"(c) *Certain exceptions for provision concerning alimony or support of spouse.* - The court may modify any provision of a deed, agreement, or settlement with respect to alimony or spousal support executed on or after April 13, 1976, regardless of how the provision is stated, unless there is:

(1) an express waiver of alimony or spousal support; or

(2) a provision that specifically states that the provisions with respect to alimony or spousal support are not subject to any court modification."

Subsections (b) and (c), quoted above, reflect a clear legislative intent favoring broad judicial authority to modify agreements with regard to alimony or spousal support. The opening words of both subsection (b) and subsection (c) broadly authorize a court to modify "any provision" with respect to alimony or spousal support. The language goes on to emphasize the breadth of this authority by saying "regardless of how the provision is stated." Finally, the only exception to a court's modification authority regarding an agreement providing for alimony or spousal support, is narrowly drawn. The exception requires that there be a provision *specifically* stating that "the provisions" concerning alimony or spousal support are not subject to "any" court modification. The word "provisions" is not limited and obviously applies to all of the provisions concerning alimony or spousal support. The Legislature's rejection of selected or partial modifiability is reinforced by the word "any" preceding the words "court modification."

The majority's decision rests upon the finding of an ambiguity in the phrase "provisions with respect to alimony or spousal support," and specifically the finding that the word "provisions" is ambiguous. The majority discerns an ambiguity in the word "provisions" because the draftperson could "have said, 'unless there is . . . a provision that specifically states that no provision . . . is subject to any court modification.'" (Slip opinion at 8). Merely because there is an alternative way of saying something, which the author of

the majority opinion prefers, does not render the statutory language ambiguous. Very often there are alternative ways of saying something, and neither way is ambiguous.

The majority also relies upon the rule of interpretation, Code (1957, 1994 Repl. Vol.), Art. 1, § 8, that the "singular always includes the plural, and vice versa, except where such construction would be unreasonable." In § 8-103 of the Family Law Article, however, the Legislature carefully used the singular word "provision" to refer to one provision, and the plural word "provisions" to refer to all of the provisions relating to alimony and spousal support. Moreover, the rule of interpretation that the plural includes the singular does not mean that the plural is limited to the singular.

As a matter of plain English, the phrase "provisions of an agreement," without any limitation, includes *all* of the provisions of the agreement. The phrase "provisions with respect to alimony or spousal support," without limitation, means *all* of the provisions with respect to alimony or spousal support. Under normal usage, in speaking of the component parts of any document, whether it is a contract, statute, will, etc., by referring to its "provisions," "words," "clauses," "sections," "language" or similar terms, the use of the plural term without limitation is all inclusive. The phrases "provisions of a contract" or "words of a contract" or "provisions of a statute" or "words of a statute," without any limitation, are normally used to refer to all of the provisions, or all of the words of the document. One can select at random numerous opinions by this Court which illustrate this usage of language. *See, e.g., Scott v. Ford Motor Credit*, 345 Md. 251, 253-255, 691 A.2d 1320, 1321-1322 (1997) (per Rodowsky, J.) (referring to "the provisions of the loan agreement" to mean all

of the provisions; when the author is not referring to all of the provisions of a document or statute, limiting language is used); *Bailer v. Erie Insurance*, 344 Md. 515, 536, 687 A.2d 1375, 1385-1386 (1997) (Chasanow, J., dissenting) (refers to "provisions of an insurance contract" to mean "[a]ll of the provisions of this contract"); *Polomski v. Baltimore*, 344 Md. 70, 75, 684 A.2d 1338, 1340 (1996) (per Karwacki, J.) (refers to "the language of the statute" to mean all of the language); *Fraternal Order of Police v. Mehrling*, 343 Md. 155, 174, 680 A.2d 1052, 1062 (1996) (to the same effect); *Ward v. Property & Casualty*, 325 Md. 1, 8, 599 A.2d 81, 84 (1991) (per Rodowsky, J.) (uses the phrase "words of the statute" to refer to all of the words).

The majority's holding that court modifiability of alimony or spousal support depends on the wording of each "provision by provision" relating to alimony or spousal support (slip opinion at 10), also overlooks the language in § 8-103 stating that *any* provision relating to alimony or spousal support is judicially modifiable "regardless of how the provision is stated" The General Assembly thus made it clear that the wording of a particular provision concerning alimony or spousal support was immaterial. Rather, judicial modifiability of any provision could be precluded only if there was a specific statement that the provisions, without limitation, could not be judicially modified.¹

¹ The majority's only discussion of the clause "regardless of how the provision is stated," is to say that "[u]nder this clause the distinction previously made between technical alimony and contractual support becomes irrelevant for purposes of applying § 8-103(c)." (Slip opinion at 7). The earlier language, at the beginning of the sentence, however, that "[t]he court may modify any provision . . . with respect to alimony *or spousal support*" (emphasis added), effectively does away with the former technical difference between

The normal meaning of the words in § 8-103 clearly refutes the majority's holding that parties may make an alimony or spousal support agreement "partially" modifiable by a court on a "provision by provision" basis. Instead, as held by the Court of Special Appeals in *Langley v. Langley*, 88 Md. App. 535, 540, 596 A.2d 89 (1991),

"[s]ection 8-103(c) is unambiguous. By its own terms, § 8-103(c) authorizes the court to modify spousal support agreements. Exempt are only those agreements containing a waiver of support, § 8-103(c)(1) or a *specific* statement that support is not subject to *any* court modification § 8-103(c)(2)."

Judge Karwacki for the Court recently summarized the principle which should be dispositive here (*Polomski v. Baltimore, supra*, 344 Md. at 75, 684 A.2d at 1340):

"In construing any statute, our principle mission is to effectuate the intent of the Legislature. *Bowen v. Smith*, 342 Md. 449, 454, 677 A.2d 81, 83 (1996); *Soper v. Montgomery County*, 294 Md. 331, 335, 449 A.2d 1158, 1160 (1982). The primary source of that intent is the language of the statute itself. *Bowen*, 342 Md. at 454, 677 A.2d at 83.

* * *

"When . . . the language of the statute is clear, further analysis of legislative intent ordinarily is not required, *Rose v. Fox Pool*, 335 Md. 351, 359, 643 A.2d 906, 910 (1994); *Scaggs*

alimony and contractual spousal support. Although the subsequent clause "regardless of how the provision is stated" would also accomplish this, the clause is much broader. It indicates that the wording of each provision by provision does not determine judicial modifiability.

v. Baltimore & W.R. Co., 10 Md. 268 (1856), and we give the words of the statute their ordinary and common meaning within the context in which they are used, *Kaczorowski*, 309 Md. at 514, 525 A.2d at 632."

In *Polomski*, 344 Md. at 80, 84, 684 A.2d at 1343, 1345, we held that the statutory language there before the Court "is unmistakably clear" and that "[w]e agree with the intermediate appellate court that the clear language of [the statute] negated the need to look elsewhere for its meaning." Similarly, with regard to § 8-103 of the Family Law Article, the statutory language is unmistakably clear, and we should agree with the intermediate appellate court in the *Langley* case. The Legislature unambiguously stated that *any* provision with respect to alimony or spousal support is subject to court modification unless the parties specifically stated that the *provisions* regarding alimony or spousal support are not subject to *any* court modification. Only the most tortured reading could find an ambiguity in this language.

(2)

The ambiguity and difficulty in this case, instead of being in the statutory language, lies in the majority's interpretation. The majority, in the earlier portion of its opinion dealing with the statutory language, focuses upon the words "provision" and "provisions," states that judicial modifiability need not be an "all or nothing approach," and indicates that "the parties may contract concerning court modifiability . . . provision by provision." (Slip opinion at 7-10). The majority illustrates its interpretation by an hypothetical agreement whereby provision one relates to the initial amount of spousal support and states that it is non-

modifiable, provision two concerns a revised amount of spousal support upon the payor's retirement and states that it is non-modifiable, provision three concerns spousal support upon loss of employment and states that it is judicially modifiable under certain circumstances, and provision four deals with spousal support upon disability and states that it can be modified by the court. (Slip opinion at 8-9). The majority seems to conclude that this "provision by provision" scheme of partial modifiability is "permissible" under the statutory language.

One problem with the majority's interpretation is what constitutes these separate and distinct "provisions"? In the present context, the phrase "provisions of an agreement" has no more specific meaning than the phrases "parts of the agreement" or "clauses of the agreement" or "words of the agreement." If, as in the majority's hypothetical, there are four separate subjects, set forth in four numbered "provisions," making up the spousal support portion of the agreement, the majority's interpretation might be workable. But not all agreements are so neatly structured. If there are numbered paragraphs, does each one constitute a separate "provision" regardless of subject matter, requiring a statement in each as to judicial modifiability? If there are no numbered or labeled divisions, does a court analyze the agreement for different subjects? What does a court do if there is no correlation between numbered paragraphs and different subjects? The difficulties with the term "provision" and with the majority's interpretation are illustrated by the majority opinion itself. While the earlier portions of the opinion seem to authorize judicial modification on a separate "provision by provision" basis (slip opinion at 7-10), the majority concludes Part

I of its opinion by addressing the agreement in this case and referring to the "spousal support *provision*" in the singular.

Furthermore, the majority's conclusion that the word "provisions" in the statute is ambiguous, and the majority's resulting notion of "partial judicial modifiability" on a "provision by provision" basis, would not appear to support the majority's decision in this case. The case at bar does not present any issue of partial court modification on a provision by provision basis. Instead, we are here dealing with contingent modifiability. Under the appellant Debra Shapiro's position, the entire agreement relating to alimony or spousal support is modifiable if the disability contingency occurs and the entire agreement relating to alimony or spousal support is non-modifiable if the disability contingency does not occur.

The present case does not involve the situation posed by the majority's hypothetical, under which certain provisions concerning certain subjects are made modifiable and other provisions concerning other subjects are made non-modifiable. The alimony portion of the agreement in this case contains separate paragraphs, identified by the letters (a), (b), etc., dealing with several subjects. Some of the paragraphs seem to deal with more than one matter. Paragraph (a), for example, sets forth the amount of monthly "alimony" from May 1, 1988, to January 1, 2009. Paragraph (a) also provides for termination of alimony upon either the death of the wife or the death of the husband. Paragraph (b) provides for the amount of monthly alimony from and after January 1, 2009, again provides for termination upon the deaths of either, and provides for termination upon the remarriage of the wife. Paragraph (d) relates to deductibility and declarations of income on the husband's and wife's income tax

returns. None of these paragraphs contains a provision relating to modifiability. Then, the final paragraph of the spousal support agreement seems to authorize complete modifiability in the event of the husband's disability. Thus, the issue in this case seems to have no relation to the alleged ambiguity in the word "provisions" discovered by the majority, and has no relation to partial modifiability on a provision by provision basis.

Since the agreement in this case provided that it was totally modifiable if a certain contingency occurred, and since, under the statutory language, total judicial modification is authorized if any part of the alimony or spousal support agreement is subject to judicial modification, the alimony or spousal agreement in the case before us is clearly subject to judicial modification.

(3)

Not only is the majority's "partial modification" theory flatly inconsistent with the unambiguous language of § 8-103, but the majority's theory cannot be squared with the history and legislative background of the statute.

Until the filing of the majority's opinion today, the concept of "partial judicial modifiability" of alimony or a spousal support agreement was entirely unknown to Maryland law. Prior to January 1, 1976, as well as after that date with regard to any agreements entered into before 1976, the right of a court to modify the spousal support portion of a separation agreement depended upon whether the spousal support agreement was incorporated in a judicial decree and constituted "alimony" in a technical sense.

"Alimony" has been defined in numerous Maryland cases, and most recently in

Horsey v. Horsey, 329 Md. 392, 410, 620 A.2d 305, 314-315 (1993), as follows (emphasis added):

"'Alimony' in a legal sense (often referred to as 'technical alimony') is a periodic allowance for spousal support, *payable under a judicial decree*, which terminates upon the death of either spouse or upon the remarriage of the spouse receiving the payments or upon the reconciliation and cohabitation of the parties. *See, e.g., Thomas v. Thomas*, 294 Md. 605, 614-621, 451 A.2d 1215, 1221-1223 (1982); *Goldberg v. Goldberg*, 290 Md. 204, 207-210, 428 A.2d 469, 472-473 (1981) A court exercising equitable jurisdiction has authority to modify its prior award of technical alimony. *Goldberg v. Goldberg*, 290 Md. at 209, 428 A.2d at 473"

Where the spousal support agreed upon by the parties possessed all of the characteristics of "alimony," and where it was incorporated in a judicial decree, it became "alimony" awarded by the judicial decree. It could later be modified by a court because of the settled principle that a court award of alimony was always subject to judicial modification. The basis for the spousal support award under these circumstances, and the basis for later judicial modification, was not that the parties had entered an agreement. Instead, the validity of the award, and the ability to modify it, rested upon the judicial decree providing alimony. *See Horsey v. Horsey, supra*, 329 Md. at 412, 620 A.2d at 315-316; *Emerson v. Emerson*, 120 Md. 584, 591-597, 87 A. 1033, 1036-1038 (1913) ("the validity of the award depends not upon the agreement, but upon the judgment or decree" and the court "has the same power of modification of the decree as it had in the absence of an agreement").

Where, however, a spousal support agreement entered prior to 1976 did not have

all of the characteristics of alimony, it was not subject to any judicial modification. Such contractual spousal support could not be judicially modified even if it was incorporated into a judicial decree or even if the parties stated that it should be "merged" into the decree. *Horsey v. Horsey*, *supra*, 329 Md. at 411-417, 620 A.2d at 315-318. The reason for this rule was the traditional doctrine, emphasized in the majority opinion, that parties ordinarily should be free to contract as they wish, and that such "spousal support payments, . . . being contractual in nature, are not subject to change absent assent of the parties, notwithstanding the fact that they have been incorporated into a divorce decree." *Goldberg v. Goldberg*, *supra*, 290 Md. at 209, 428 A.2d at 473. Nevertheless, this traditional contract doctrine was not applicable to alimony, as "[t]echnical alimony can only be provided by decree of court." *Ibid.*

In sum, prior to 1976 no spousal support agreement incorporated into a judicial decree was subject to partial judicial modification. If the agreement incorporated into a decree constituted alimony, it was fully subject to subsequent judicial modification because judicial decrees of alimony had always been subject to modification. If the incorporated agreement did not have all of the characteristics of alimony, it was not subject to any subsequent judicial modification on the ground that courts generally do not modify contractual obligations.

In 1975 and 1976, the General Assembly changed the law to give courts much greater authority to modify spousal support agreements. Departing from the traditional contract principles on which the former law was based, the Legislature in § 8-103 of the

Family Law Article provided that both alimony and non-alimony contractual spousal support were subject to judicial modification. The statutory language itself demonstrates a policy favoring judicial modification of agreements and restricting traditional contract principles. Under § 8-103(c), a court is broadly authorized to modify "any provision" concerning alimony or contractual spousal support, "regardless" of the parties' intent reflected in the wording of that provision. In addition, as discussed in the beginning of this opinion, the only exception to the court's modification authority is very narrowly drawn. The majority opinion, with its reliance on traditional contract principles, wholly fails to give effect to the Legislature's clear purpose of greatly increasing judicial modification authority. The General Assembly obviously believed that, in the context of spousal support, courts should have broader power to modify agreements because of changed circumstances, fairness, unequal bargaining power, etc.² Regardless of the majority's view of this policy, this Court should give effect to the legislative intent.

Although the General Assembly, in enacting § 8-103, intended to enlarge the authority of courts to modify spousal support agreements, there is utterly no indication from the statutory language or the legislative history that the Legislature intended to change the traditional principle that a spousal support agreement was either wholly modifiable or not modifiable at all. The majority opinion states that it discerns no legislative "intent to perpetuate the all or nothing approach to modifiability that characterized that prior law."

² See S. Sharp, *Fairness Standards and Separation Agreements: A Word of Caution on Contractual Freedom*, 132 U. Pa. L. Rev. 1399 (1984).

(Slip opinion at 17). If the statutory language and legislative history were silent on this issue, as the majority apparently believes, the normal presumption would be that the Legislature did not intend to change the law. Moreover, as shown in Part (1) of this dissent, the statutory language is clearly inconsistent with any notion of partial modifiability of a spousal support agreement.

Another strong indication that the Legislature did not intend to adopt the majority's novel "partial modification" theory is the legislative acquiescence in the holding of *Langley v. Langley, supra*, 88 Md. App. 535, 596 A.2d 89. We have often pointed out that, where the General Assembly has acquiesced in the judicial construction of a statute, there is a strong presumption that the legislative intent has been correctly interpreted. Although the principle is ordinarily applicable only when the construction of the statute was by this Court, *United States v. Streidel*, 329 Md. 533, 551 n. 12, 620 A.2d 905, 914 n.12 (1993), there are exceptions where the principle has been applied to constructions of a statute by other entities. *See, e.g., Prince George's County v. Brown*, 334 Md. 650, 660, 640 A.2d 1142, 1147 (1994); *State v. Crescent Cities Jaycees*, 330 Md. 460, 470, 624 A.2d 955, 960 (1993).

In the particular area of family law involved in this case, the General Assembly has changed the law to overrule statutory interpretations by the Court of Special Appeals with which the General Assembly disagreed. *See* § 8-105 of the Family Law Article, overruling *Mendelson v. Mendelson*, 75 Md. App. 486, 541 A.2d 1331 (1988), and the Floor Report of the Senate Judicial Proceedings Committee on Senate Bill 541 of the 1989 General Assembly ("This bill is expressly intended to overrule the holding of the Court of Special Appeals in

Mendelson v. Mendelson, 75 Md. App. 486, 541 A.2d 1331 (1988)"). Nevertheless, the Court of Special Appeals' construction of § 8-103 in *Langley v. Langley*, *supra*, has not been modified by the General Assembly. In light of this legislative acquiescence, this Court should not now overrule *Langley* and adopt, for the first time in Maryland history, the doctrine that a spousal support agreement incorporated in a court decree may be partially modifiable by a court.

The majority's novel and confusing interpretation of § 8-103 of the Family Law Article finds no support in either the language or history of the statute. I would reaffirm the interpretation of § 8-103 set forth six years ago in the *Langley* case and accepted by the General Assembly.

Judge Raker concurs with the views expressed herein.