Circuit Court for Montgomery County
Case No. CSA-REG-0884-2020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0884

September Term, 2020

YVON RESPLANDY

v.

IRINA CHAYKA

Friedman,
Wells,
Eyler, James R.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Wells, J.

Filed: November 19, 2021

Appellant Yvon Resplandy ("Husband") appeals from an order of the Circuit Court for Montgomery County which found that the investment growth on an individual retirement account ("IRA") should be divided equally between him and Appellee Irina Chayka ("Wife") after first deducting Husband's marital share valued at $88,000.00.

Husband, representing himself, presents two questions for our review, which we have consolidated and rephrased:[1] Did the circuit court err in its decision to divide equally the investment growth accrued between the valuation date and the ultimate disbursement date on the non-marital portion of Husband's IRA?

Concluding that the circuit court did not err, we affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On November 28, 2016, the Circuit Court for Montgomery County issued Husband and Wife a Judgment of Absolute Divorce ("JAD"). The order provided for the division of the parties' marital property based on an agreement that the parties placed on the record

[1]Appellant's verbatim questions and emphasis, less citations to the record, are:

1. Did the Lower Court err, or abuse its discretion, when it justified its decision to deny the investment growth on the Appellant/Defendant non-marital share of his IRA ($88,000.00) by stating in the opinion that "…*delay in resolving this issue is attributable in large measure to the Defendant and to a lesser degree to Plaintiff…"* and making similar comments during the hearing of 9/16/2020 that Appellant/Defendant was responsible for the delay.

2. Did the Lower Court err, or abuse its discretion, when it denied any investment growth on the share of Appellant's IRA, which the parties agreed, was not marital property ($88,000.00) but accrued substantial investment growth after the "Agreement Placed on the Record" and after (but about 3 weeks) the JAD was docketed, between the valuation date (11/28/2016) and the date of disbursement (after equalization by Wells Fargo Advisors) of the Parties' respective 2 IRAs (September 30, 2020)?.

that same day. The marital property included two IRA accounts: one in Wife's name, and a larger one in Husband's name. The order instructed:

> The parties will divide the two accounts by first giving to [Husband] an amount equal to $88,000.00 from his account. Thereafter, the parties intend to equalize the two accounts (add together, divide by two, and pay from [Husband's account] to [Wife's account] an amount necessary to make the two accounts even as of the valuation date) and make one transfer from [Husband's] account to [Wife's] account by way of Qualified Domestic Relations Order, or similar order to effect the change. Both parties will enjoy or suffer the gains or losses, after the $88,000.00 to [Husband], on their respective shares after the valuation date of November 28th, 2016.

The trial court docketed the JAD on December 21, 2016.

After two years' time, Husband had not yet signed the documentation necessary for Wells Fargo, the custodian of both IRAs, to complete the IRA equalization. During this time, Husband was to have drafted a Qualified Domestic Relations Order (QDRO), as referenced in the JAD, but did not. Instead, counsel for Wife drafted a QDRO and submitted it to Husband to facilitate the distribution of the IRA accounts. Husband would not sign Wife's QDRO, maintaining it was poorly prepared

Overruling Husband's protest, a circuit court judge signed Wife's QDRO and it became an order of the court. Regarding the division of the IRAs, the QDRO provided:

> A. That the Parties' Existing IRAs are Marital Property.
> B. That the Parties' Existing IRAs be divided, and [Husband] be given an amount equal to $88,000.00 from his IRA account[.]
> C. That the Parties' Well Fargo's Financial Adviser, John LaValle, equalize the Existing IRAs (add together, divide by two, and pay from [Husband's account] to [Wife's account] an amount necessary to make the two IRA accounts even) and make one transfer from [Husband's] account to [Wife's] account.
> D. That both Parties will enjoy or suffer the gains and losses, after the $88,000.00 to [Husband], on their respective shares after the valuation date of November 28th, 2016.

> E. That the Parties are directed to submit to Wells Fargo all documents and releases to finalize this Order within 30 (thirty) days of the request for same.

Despite the court order, Wells Fargo notified the parties that it was unable to redistribute the funds in the IRAs because the language in the JAD and the QDRO did not specify exactly how it should carry out the transaction. To facilitate the transfers, Wells Fargo requested that Husband sign a form titled "IRA Transfer Due to Divorce Agreement."

On March 29, 2019, the circuit court issued an Immediate Order of Contempt against Husband for failing to execute the IRA documents with Wells Fargo. Husband signed and emailed a form to Wells Fargo on April 2, 2019. The parties then filed a flurry of motions, with Wife claiming that Husband had filed the wrong form. In September, the circuit court held a hearing and on October 25, 2019, the court issued an order directing Husband to execute the Wells Fargo "IRA Transfer Due to Divorce Agreement" form, and specified that Husband should complete the form's identification fields, but that

> all other sections should remain blank to be completed by Wells Fargo to effectuate the transfer pursuant to the terms of the Judgment of Absolute Divorce. The valuation date will be November 28, 2016, and the parties shall proportionately share any "gains or losses" as of the date of distribution.

Husband executed the requested form on November 6, 2019.[2] Two days later, Wife moved to alter or amend the court order.[3]

On November 22, 2019, Husband filed a Motion to Partially Revise the October 25, 2019 court order, alleging that an attorney for Wells Fargo told Husband that the attorney was "inclined not to include the growth on the $88,000.00 [in deducting Husband's portion off the top] because it is not specifically spelled out in the [October 25, 2019] Order." Husband asserted in his motion that the JAD made clear that $88,000.000, *as well as* whatever growth occurred on that amount after November 28, 2016, was to be deducted from the IRA as Husband's exclusive property before equalizing Husband and Wife's IRAs, and so he requested the court revise the October order to specify as much.

Finally, a hearing was held on September 16, 2020 in the circuit court, to resolve the parties' dispute on the distribution of interest and gains that accumulated on the $88,000.00 since the November 28, 2016 valuation date. Both Husband and Wife were present and represented by counsel, as was Wells Fargo, now an interested party. Counsel for Husband argued that Husband ought to receive the interest earned on the $88,000.00 (which was in the form of an annuity) from the valuation date to the date of disbursement,

[2] Testimony from Wells Fargo at the September hearing indicated the form that Husband signed in April was not sufficient for permitting it to complete the transfers, which is why the court issued the order for Husband to submit the "IRA Transfer Due to Divorce Agreement" form. The record is unclear as to why the April form was insufficient, but we find that matter irrelevant to the issue presented in this appeal.

[3] This motion does not appear to have been included in the exhibits provided by Husband, but according to counsel for Husband in the September 16, 2020 hearing, the motion had more to do with Wife's request for additional attorney's fees and a penalty—items not at issue in this appeal.

still yet to occur.[4] Counsel for Wife countered that Husband's share off the top ought to be discounted for the negative interest the money in the annuity earned,[5] as well as the fact that Husband had been holding Wife's money (by delaying the IRA equalization) for the approximately four years that had passed since the JAD was issued.

The court disagreed, stating that her first argument—discounting the negative interest the annuity earned—was not presented in her motion. Next, the court read the language of the JAD and concluded that "the gains and losses to be split . . . is after the $88,000 is paid to [Husband]," and the judgment "does not contemplate or mention any gains or losses on the $88,000." The court reiterated the instructions to Wells Fargo that only $88,000.00 was to be deducted from Husband's IRA before the two accounts were equalized, noting that "[t]he order is quite clear."

Husband now appeals from the circuit court's September 16, 2020 ruling, as well as from the court's October 25, 2019 order directing that the parties' IRA accounts be equalized after exactly $88,000.000—with no subsequently accrued interest or gains—is deducted from Husband's account.

STANDARD OF REVIEW

Based on our understanding of Husband's brief, it seems that the circuit court's interpretation of the language of the JAD is the issue at the heart of this appeal. The

[4] Wells Fargo advised the court that there had been a 19.85% interest gain on the $88,000.00 from the valuation date to August 30, 2020.

[5] By "negative interest," Wife referred to the annuity's annual interest, which, while still constituting a gain on the money invested, had allegedly been decreasing in amount each year.

interpretation of a document with legal significance is a question of law subject to *de novo* review. *See PaineWebber Inc. v. East*, 363 Md. 408, 413 (2001) ("Interpretation of the unambiguous separation agreement presented in the instant case is a question of law for the court and, therefore, is subject to *de novo* review.").

However, Husband also appears to be arguing, in the alternative, that equity requires deviation from the distribution of the $88,000.00 as ordered in the JAD, "in light of the large and unexpected delay between the valuation and disbursement dates" which "was anticipated neither in the Consent Agreement of November 28, 2016, nor in the JAD of December 21, 2016." To the extent this argument was preserved, we review the circuit court's decision to deny such relief for an abuse of discretion; that is "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." *See Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (explaining that a monetary award is a form of equitable relief, and thus a discretionary standard of review applies).

DISCUSSION

A. Parties' Contentions

In his brief, Husband states that because he "does not have any professional training in law, he will rely heavily on the evidence to argue his case and will not engage in arduous and complex legal reasoning." He advises that all legal arguments can be found in the Table of Citations**.** There, Husband lists and comments on several cases, his most apparent conclusion being that where assets are deemed non-marital, growth on those assets is also not marital property. *E.g., Golden v. Golden*, 116 Md. App. 190, 205. He further appears to argue that giving Wife a portion of the growth on the $88,000.00 would amount to a

"monetary award," which is an award "intended to compensate a spouse who holds title to less than an equitable portion" of property, *Ward v. Ward*, 52 Md. App. 336, 339–40 (1982), and that such compensation is clearly not necessary here since all the parties' marital assets were divided equally. Husband also cites *Long v. Long*, 129 Md. App. 554, 579 (2000) to emphasize "that the judge has 'all the discretion and flexibility he needs to reach a truly equitable outcome.'" Finally, Husband specifically alleges the court erred by basing its decision on its opinion that the delay in resolving the issue was Husband's fault.

Wife did not file a brief in this appeal.

B. Analysis

We begin with Husband's comment that he has relied largely on the evidence to make his arguments in this appeal. We do not address any factual arguments which Husband makes that are not readily apparent to us. Likewise, to the extent we may not have fully gleaned all of Husband's intended legal arguments, we do not consider them. Put simply, "appellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented." *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 618, 690 (2011) (citing *State Roads Comm'n v. Halle*, 228 Md. 24, 32 (1962) ("Surely, it is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested.")).

1. The Distribution of the IRAs Turns on What the JAD Said About the IRAs' Gains/Losses

To address what we perceive as Husband's first legal argument, we do not believe the resolution of the proper distribution of the interest and other gains accrued on the $88,000.00 turns on whether such gains are marital or non-marital property. When the circuit court issued the JAD, it had already resolved what property, including the parties' respective IRAs, was marital or non-marital. One purpose of the JAD was to use those findings to conclusively determine how the parties' assets should be divided, as they existed at a certain moment in time. Given this purpose, we examine the language of the JAD to determine how the two IRAs should be divided.

We believe that the relevant provision of the JAD should be construed in the same manner as a contract. *See PaineWebber Inc.*, 363 Md. at 414 (quoting *Orkin v. Jacobson*, 274 Md. 124, 128 (1975) ("Property settlement agreements, as all other contracts scrutinized under the law of this State, are subject to interpretation in light of the settled and oft-repeated principles of objective construction.")). Where a contract's language is unambiguous, this Court "is bound to give effect to the plain meaning of the language used." *Id.* When the contract's language is ambiguous, extrinsic evidence may be consulted to discern the intention of the parties. *Collier v. MD-Individual Practice Ass'n, Inc.*, 327 Md. 1, 5–6 (1992).

We conclude that the JAD provision regarding the IRAs is unambiguous. It instructs that Husband's "off the top" $88,000.00 share is to be deducted before equalizing the parties' IRAs, and that division will not include any gains or losses that occurred after

November 28, 2016. Specifically, the final sentence of that provision—"Both parties will enjoy or suffer the gains or losses, after the $88,000.00 to [Husband], on their respective shares after the valuation date of November 28th, 2016[]"—is unmistakably clear. Were the provision to necessitate Husband's desired result, it would instead read something like this: "Husband will enjoy or suffer any gains or losses on the $88,000.00 after the valuation date of November 28th, 2016 *and until the date of disbursement*."

But assuming purely for argument's sake the above provision was ambiguous, or that we were concerned the delay in disbursement was a mutual mistake of fact perhaps warranting equitable relief to a party, we would consult extrinsic evidence. In that case, we need look no further than the parties' agreement, which was the basis for the JAD. In that agreement, the parties expressly noted that the value of Husband's IRA would change by the time the distribution occurred. In fact, it was Husband's attorney (different from the attorney who represented Husband at the September 16, 2020 hearing) who said that any subsequent gains or losses be shared by the parties:

> [COUNSEL FOR HUSBAND]: The husband will take 88,000 off of the top of his, and then the parties will equalize the other two. So in other words, there'll be a subtraction of 88,000 **from whatever the current value of his is**, and then they will add the two, divide it, and he will make one payment from his because its large enough to equalize the two after the 88,000 is done.
>
> We didn't talk about it, but **it should probably, I would guess, be for both sides, valued as of today, because it's going to change by the time we get the order in, and both sides should probably receive gains and/or losses, depending on what the market does**, if it's agreeable.
>
> [COUNSEL FOR WIFE]: Yes.

> [COUNSEL FOR HUSBAND]: All right. **Because we don't know what's going to happen.**

(Emphasis added). Consequently, if we were to determine that the provision in the order of divorce was ambiguous, consulting the parties' agreement, from which the divorce decree was derived, makes apparent that the parties agreed that both parties would "enjoy and suffer any gains and losses *after* the $88,000 [was distributed] to [him]."

2. The Circuit Court Did Not Hold Husband Solely Responsible for the Delay in the Equitable Distribution of the IRAs.

The issue of whether the four-year delay in equalizing the IRAs was so extreme that it nonetheless warrants equitable relief, leads us to Husband's claim that the circuit court improperly assigned responsibility to him for the delay in getting the IRAs equitably distributed. Husband points us to the court's statement that the "delay in resolving this issue is attributable in large measure to [Husband] and to a lesser degree to [Wife]." We observe, however, that this remark from the opinion accompanying the court's October 25, 2019 order formed the basis of the court's decision that Husband must pay Wife's "attorney's fees in connection with her efforts to resolve the issue of the transfer of the parties' retirement benefits"—*not* its decision regarding whether only Husband should receive the interest and gains accrued on the $88,000.00 since the valuation date. Husband does not raise the issue of attorney's fees in this appeal—nor would we be likely to find such a consideration inappropriate if he had.

Husband also directs us to specific comments the court made at the September 16, 2020 hearing. There, after the court had concluded that the JAD was clear that no interest was to be added to Husband's $88,000.00 pre-equalization deduction, counsel for Husband

protested that the JAD "contemplated division at the time of the divorce, not for a division almost four years later." The court responded:

> THE COURT: The reason that money is still sitting in that account is **partially** due to [Husband], okay? He could have had his $88,000 and invested it in any way he wanted over the last whatever years. So I am not interested in the fact that either party may have lost some money based upon their behavior and actions in not resolving this case. This should have, and could have, been resolved years ago. **I believe both parties are responsible for this delay**, so [Husband] has to live with whatever comes from him not promptly participating in assisting to have this issue resolved, okay?
>
> * * *
>
> I'm familiar with [Husband]. He is a very intelligent man. He represents himself well. So, he knows. **And I hold [Counsel for Wife] and [Wife] responsible as well. Both parties could have resolved this issue long before now, okay?**

(emphasis added). We do not think these comments suggest the court blamed the delay solely on Husband. The court expressly found both parties responsible. As further indication of this, the court also rejected Wife's argument that Husband's $88,000.00 deduction should be *reduced* in light of the allegedly negative interest earned by the annuity in which the money was held, and that he had effectively been holding her money—on which she might have earned greater interest by investing differently—for nearly four years. The comments above, along with the court's declination to grant *either* party's request, demonstrate the court's position that it should be to neither party's benefit that four years had passed since the distribution was intended to occur. To the extent equitable relief might have been considered, these observations demonstrate the court's exercise of discretion—which it had the authority to use—not to award such relief. We do not find this to be an abuse of discretion.

More to the point, we do not agree that these comments constitute the court's justification for its decision not to award Husband all the interest accrued on the $88,000.00 since the valuation date. The court unmistakably based this decision on its interpretation of the relevant provision of the JAD. The court read the provision aloud three times before the parties, emphasizing that any gains or losses on the $88,000.00 are to be split between the parties after the valuation date. The court concluded that "the judgment of absolute divorce is quite clear" on the manner in which the IRAs are to be distributed.

Concluding that the circuit court neither erred in its interpretation of the IRA provision in the JAD, nor abused its discretion by choosing not to deviate from the plain language of that provision, we affirm.

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