[Cite as *Meaney v. Meaney*, 2015-Ohio-1992.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

KEVIN M. MEANEY,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2013-L-072**
- vs -	:	
STACY MEANEY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 07 DR 000065.

Judgment: Affirmed.

Linda D. Cooper, Cooper & Forbes, 166 Main Street, Painesville, OH 44077 (For Plaintiff-Appellee).

James W. Reardon, Carrabine & Reardon Co., L.P.A., 7445 Center Street, Mentor, OH 44060 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Stacy Meaney appeals from the July 8, 2013 judgment of the Lake County Court of Common Pleas, Domestic Relations Division, adopting the decision of its magistrate, and ordering her to pay her former husband, Kevin M. Meaney, delinquencies regarding the mortgage, equity line and utilities for the marital residence. Finding no error, we affirm.

{¶2} This is the second appeal in this matter. *See, e.g.*, *Meaney v. Meaney*, 11th Dist. Lake No. 2009-L-050, 2010-Ohio-1969. The parties were married in 1991, and have three sons. *Id.* at ¶4. Mr. Meaney filed for divorce in January 2007. *Id.* at ¶5. A final decree of divorce was filed March 27, 2009. The decree contained the following provisions, by stipulation of the parties:

{¶3} "Commencing on October 31, 2007 the Plaintiff shall pay 65% of the electric, gas, water and sewer, trash collection, cable, snow removal and basic land telephone (each of the parties shall pay their own long distance charges). The Defendant shall pay the balance of these expenses.

{¶4} "The marital residence shall be listed for sale (at which time the property will be actively marketed) on or before January 1, 2008.

{¶5} "Commencing on October 31, 2007 and continuing until such time as the marital residence is listed for sale (at which time the property will be actively marketed) the Plaintiff shall pay one half (1/2) of the first mortgage and equity line and the Defendant shall pay the other half.

{¶6} "At such time as the marital residence is listed for sale (at which time the property will be actively marketed) the Plaintiff shall pay 65% of the first mortgage and equity line and the Defendant shall pay the balance.

{¶7} "In the event the Defendant should fail to make any of the foregoing payments at the time they are due, the Plaintiff shall advance her share of the payment and he shall be reimbursed from the Defendant's share of the proceeds from the sale of the marital residence."

{¶8} Ms. Meaney did not make the payments. January 12, 2011, Mr. Meaney filed two motions to show cause, one relating to the nonpayment on the mortgage and equity line, the other to nonpayment on the utilities. Hearing was held May 17, 2012, before the magistrate. Thereafter, Ms. Meaney filed for bankruptcy, and the matter was stayed. After Ms. Meaney's discharge from bankruptcy, the magistrate filed his decision on March 22, 2013. Ms. Meaney's argument was the trial court lacked jurisdiction of the issues presented by the show cause motions. She noted the decree stated that if she failed to make her portions of the payments, Mr. Meaney was required to advance them. She then pointed out the decree stated Mr. Meaney would be reimbursed from the sale of the marital residence, if she failed to make her payments. The marital residence had sold at a loss; there was no money from its sale to reimburse Mr. Meaney. Ms. Meaney maintained that since the decree used the mandatory phrase "[Mr. Meaney] shall be reimbursed from * * * the proceeds from the sale of the marital residence," Mr. Meaney had no further recourse to recoup the payments, and that any attempt to make her pay otherwise amounted to a change in the property settlement, which the trial court lacked jurisdiction to do.

{¶9} The magistrate rejected this argument, noting the domestic relations court retains jurisdiction to interpret and enforce its own decrees. He declined to hold Ms. Meaney in contempt, since she had overpaid child support to Mr. Meaney. Rather, the magistrate applied the overpayments in child support to the delinquencies on the payments relating to upkeep of the marital residence, and ordered Ms. Meaney to make up the difference.

{¶10} Ms. Meaney filed objections. By its July 8, 2013 judgment entry, the trial court denied the objections, and adopted the decision of the magistrate. Ms. Meaney timely noticed appeal, assigning a single error: "The trial court erred (as a matter of law) to the prejudice of appellant when it granted the appellees' (sic) motion to show cause and ordered appellant Stacy Meaney to pay a percentage share of the mortgage, equity line and utility bills."

{¶11} Normally, we review a trial court's decision to adopt, reject, or modify a magistrate's decision for abuse of discretion. *In re Gochneaur*, 11th Dist. Ashtabula No. 2007-A-0089, 2008-Ohio-3987, ¶16. Further, decisions by the domestic relations court interpreting divorce decrees generally are reviewed for abuse of discretion. *Dvorak v. Dvorak*, 11th Dist. Portage No. 2006-P-0003, 2006-Ohio-6875, ¶7, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶12} However, in this case, the disputed language in the divorce decree results from the stipulation of the parties. "A stipulation may be defined as a voluntary agreement made in a judicial proceeding by the parties as to some relevant point to eliminate the need to present proof of a fact. *State v. Small*, 162 Ohio App.3d 375, 2005-Ohio-3813, * * * (10th Dist.)." (Parallel citation omitted.) *In re N.G.*, 3d Dist. Hancock No. 5-13-35, 2014-Ohio-3190, ¶9.

{¶13} "'Agreements incorporated into divorce decrees are contracts and are subject to the rules of construction governing other contracts.' (Citation omitted.) *Majeski v. Majeski*, 2d Dist. Montgomery No. 24668, 2012-Ohio-731, ¶13. 'Typically, we review contractual questions *de novo*, except where the contract is ambiguous. (* * *) The trial court has broad discretion to clarify ambiguities, but whether a contract is

ambiguous is a decision that is made as a matter of law.' (Citation omitted.) *Id*." *Hulse v. Hulse*, 2d Dist. Greene No. 2013-CA-30, 2014-Ohio-1106, ¶15.

{¶14} We conclude that since the disputed language results from the agreement of the parties, it should be interpreted according to contract law. In so doing, we give "common words and phrases their ordinary meanings, unless absurdity results, or a different meaning is clearly evidenced from the face or overall contents of the contract." *QualChoice, Inc. v. Nationwide Ins. Co.*, 11th Dist. Lake No. 2007-L-172, 2008-Ohio-6979, ¶37, citing *Nationwide Mut. Ins. Co. v. Godwin*, 11th Dist. Lake No. 2005-L-183, 2006-Ohio-4167, ¶27. ""The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement."" *Hulse*, *supra*, at ¶16, quoting *Jackson v. Hendrickson*, 2d Dist. Montgomery No. 20866, 2005-Ohio-5231, ¶23, quoting *Kelly v. Medical Life Ins. Co.*, 31 Ohio St.3d 130, 132 (1987).

{¶15} On appeal, Ms. Meaney makes the same argument she did in the trial court: the provision in the divorce decree stating Mr. Meaney "shall be reimbursed from * * * proceeds from the sale of the marital residence," if she failed to pay her portion of the expenses for its upkeep, provided the exclusive means for him to recoup his advances for these expenses. We respectfully find that application of plain contract law negates this argument. The intent of the parties, as revealed by reading the disputed portions of the decree together, was to fix the proportions to be paid by each for the upkeep of the marital residence pending its sale. The provision relied on by Ms. Meaney merely creates an automatic mechanism for recompensing Mr. Meaney in case she failed to pay her share. It does not establish an *exclusive* mechanism.

{¶16} The judgment of the trial court did not impermissibly change the property division between the parties: it preserved it, by enforcing the property division agreed to by the parties. The trial court correctly interpreted the disputed language. The assignment of error lacks merit.

{¶17} The judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

DIANE V. GRENDELL, J., concurs,

TIMOTHY P. CANNON, P.J., concurs in judgment only with a Concurring Opinion.

TIMOTHY P. CANNON, P.J., concurring in judgment only.

{¶18} I respectfully concur in the judgment to affirm the order of the trial court. I disagree with some of the majority's analysis.

{¶19} The tortured procedural history of this case involves numerous prior magistrate decisions, court orders, and appeals. Appellant contends the current versions of the magistrate's decision and the trial court's order from which she appeals amount to a "modification" of the court's previous equitable division of property, which the trial court did not have authority or jurisdiction to issue. However, the trial court, by virtue of its prior decision in April 2012 and its current order of June 13, 2013, it is clear that it exercised its equitable powers and ability to enforce its prior orders.

{¶20} I believe the trial court had authority to issue its decision based on its equitable powers and its ability to enforce its own orders, and therefore it did not abuse its discretion in doing so.