

**IN THE COURT OF APPEALS
OHIO FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO**

KATHRYN A. STREICHER,	:	APPEAL NO. C-080395
Plaintiff-Appellant,	:	TRIAL NO. DR-0100878
vs.	:	<i>JUDGMENT ENTRY.</i>
THOMAS H. STREICHER,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Kathryn Streicher and defendant-appellee Thomas Streicher were married in July 1976 and divorced in March 2001. (To avoid confusion, we refer to the Streichers by their first names.) In an agreed entry, the Streichers divided Thomas’s pension as follows: “Retirement (OP&FPF), deferred compensation accounts shall be divided equally between the parties accumulated from July 3, 1976, through October 1, 1998. [And the] parties shall execute any document necessary to effectuate a division of the monthly benefits accrued during the term of the marriage of the pension fund and division of the deferred compensation accrued during the term of the marriage.” The parties also agreed that the term of the marriage would be from July 3, 1976, to October 1, 1998.

The trial court concluded that the parties had unambiguously agreed to divide the accumulated benefits of the deferred-compensation and pension funds from July 3, 1976, to October 1, 1998. Kathryn contests that determination, arguing that the

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

parties had agreed to use the coverture method of valuation found in R.C. 3105.82(D), and that the language in the agreed entry should have been interpreted to reflect the parties' intent. Not so—the language used in the divorce decree and the agreed entry of property division cannot be reasonably interpreted to support Kathryn's argument. Because the language is plain and unambiguous, the judgment of the trial court is affirmed.

In her appeal, Kathryn advances the following assignments of error: the trial court erred (1) in denying her motion for contempt and in failing to construe the language of the parties' divorce decree in a manner consistent with the special meaning that the parties attached to the words contained in the decree; (2) in failing to find ambiguity in the divorce decree; and (3) in distributing the parties' assets in an inequitable manner that was contrary to the divorce decree. We dispose of Kathryn's assignments of error together, first summarily rejecting her argument that the trial court erred in denying her contempt motion. The basis of Kathryn's contempt motion was that Thomas had failed to execute a qualified domestic relations order dividing Thomas's retirement and deferred-compensation accounts (as she would have had them divided). The court had not required Thomas to sign the qualified order; moreover the subject matter of that order was disputed at the time and is likewise disputed on appeal—a contempt order was not warranted.

I. The Threshold for Consideration of Parol Evidence

Kathryn and Thomas dispute the meaning of their agreed judgment entry. Agreed entries submitted to the court are contracts that are governed by contract law.² The interpretation of a written contract is a matter of law subject to de novo review.³ “Common words appearing in a written instrument will be given their

² See *Reik v. Bowden*, 1st Dist. No. C-060531, 2007-Ohio-2533, ¶12.

³ *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 374 N.E.2d 146.

ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.”

Kathryn argues that when contracting to divide both “monthly benefits accrued during the term of the marriage of the pension fund and the deferred compensation accrued during the term of the marriage,” the parties really intended to use the coverture formula found in R.C. 3105.82(D). Under the coverture-fraction method, “the total years of marriage are divided by the total years of [the former spouse’s] service”; and then the recipient spouse is awarded “half of the coverture fraction multiplied by the value of the pension at the time of retirement.”⁴

Kathryn would have us review the record and glean an interpretation that has no basis within the four corners of the agreement and that directly contradicts the language of the agreement. Neither coverture nor fraction is mentioned in the agreement, but what is manifestly clear is that the parties agreed to divide the pension and deferred-compensation funds as of October 1, 1998, and that they would execute a document to divide the monthly benefits accrued during the term of the marriage (July 3, 1976, through October 1, 1998, *as agreed*).

No ambiguity can be found on the face of the agreed entry; and even if there was an ambiguity, the meaning proposed by Kathryn in her extrinsic evidence and advanced in this case directly contradicts the language of the agreed entry. Under no reasonable interpretation could a court have concluded that the parties had agreed to use the coverture method of valuation.

We refuse to assign a meaning to the agreement that has been effectively excluded by the plain and unambiguous terms of the agreed entry, and therefore Kathryn’s assignments of error are without merit.

The trial court’s judgment is affirmed.

⁴ *Long v. Long* 176 Ohio App.3d 621, 2008-Ohio-3006, 893 N.E.2d 217.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and WALSH, JJ.

JAMES E. WALSH, from the Twelfth Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on February 4, 2009

per order of the Court _____.

Presiding Judge

