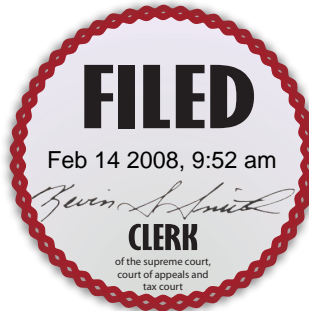


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GERALDINE FURNISH,
Appellant-Petitioner,

vs.

CHARLES E. FURNISH, JR.,
Appellee-Respondent.

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No. 85A02-0707-CV-643

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen III, Judge
Cause No. 85C01-9910-DR-454

February 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPBACK, Judge

Geraldine Furnish appeals the trial court's judgment regarding arrearages owed to her by Charles E. Furnish, Jr. Geraldine raises one issue, which we restate as whether the trial court abused its discretion by ordering Charles to pay a percentage of his net pension rather than a percentage of his gross pension. We affirm.

The relevant facts follow. Charles and Geraldine married in 1991 and separated in 1999. The trial court entered a decree of dissolution on April 20, 2000, which provided in part:

It is the Court's intention that Geraldine should receive 25% of the retirement benefits receivable by Charles from his Navy pension, in order to make the distribution of property which the Court believes is equitable in this case. Because this Court is unfamiliar with the peculiarities of military pensions, whenever this portion of the order may be unclear with regard to the exact provisions necessary to effect this intent, the parties shall interpret this provision to further the Court's intent.

Geraldine shall receive a proportionate share of the Navy retirement benefits of Charles as follows:

* * * * *

b. Charles shall pay to Geraldine future payments based upon a percentage of Charles' retirement benefits receivable from his Navy retirement benefits if, as and when Charles receives his retirement benefits. Said payment shall be equivalent to 25% of the retirement benefits paid to Charles. To the extent possible, the retirement benefits shall be paid directly by the plan administrator to Geraldine. The right of Geraldine to receive 25% of the benefits of Charles extends to and includes any election made by Charles regarding receipt of such benefits by periodic payments or by a lump sum payment. It shall further extend to any lump sum payment received by Charles in the event that he should be entitled to receive such payments.

* * * * *

Appellant's Appendix at 26.

In August 2005, Geraldine filed an information for contempt, alleging that Charles had failed to pay her 25% of his gross Navy pension. On August 30, 2005, the trial court found:

* * * * *

2. Based upon a review of the pleadings submitted, the Court concludes that [Charles's] obligation to pay to [Geraldine] 25% of his navy pension, upon receipt, should be based upon the net receipt, after taxes, because that is what he "receives." . . .

3. It also does not appear that [Charles] has provided to [Geraldine] documentation to show that amount of his navy pension since the Final Decree was entered. Accordingly, while the Court does not find [Charles] to be in contempt, the Court is unable to determine what arrears, if any, are owed. This matter shall be set for further hearing upon request of either party and following their review of the appropriate documents. [Charles] is ordered to provide [Geraldine] with all documents now in his possession dating from the date of the Final Decree of Dissolution, relative to the navy pension, and to otherwise cooperate with [Geraldine] as necessary so that she may receive such documentation from any other source. [Charles] is further ordered to provide [Geraldine] with copies of any further statements related thereto, hereafter received, within five days of receipt.

Id. at 12-13.

On March 23, 2007, Geraldine filed a petition to determine arrearage and an information for contempt. After a hearing, the trial court entered the following order on June 7, 2007:

Pursuant to the Court's order of August 30, 2005, [Charles] was to pay 25% of what he "received" from his Navy pension to [Geraldine]. [Geraldine's] Exhibit 1 reflects the calculations of what would have been owed. While [Charles] may have had improper withholdings, it does not effect that he "received" what is reflected on [Geraldine's] Exhibit 1. Court concludes that is the appropriate amount by which the 25% should be calculated. The Court finds that [Charles] is in arrears in the payments of his pension obligation in the sum of \$1,308.16. . . .

Id. at 11.

On appeal, Charles filed a motion to dismiss, arguing that the August 2005 order was a final appealable order and that Geraldine failed to file a timely appeal of that order. Our motions panel denied Charles's motion to dismiss.

The issue on appeal is whether the trial court abused its discretion by ordering Charles to pay a percentage of his net pension rather than a percentage of his gross pension.

[W]hen we review a claim that the trial court improperly divided marital property, we must decide whether the trial court's decision constitutes an abuse of discretion, considering only the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also occurs when the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute.

Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court.

Elkins v. Elkins, 763 N.E.2d 482, 484-485 (Ind. Ct. App. 2002).

We first address Geraldine's argument that the trial court could not modify its order based upon Ind. Code § 31-15-7-9.1, which provides:

- a) The orders concerning property disposition entered under this chapter (or IC 31-1-11.5-9 before its repeal) may not be revoked or modified, except in case of fraud.
- b) If fraud is alleged, the fraud must be asserted not later than six (6) years after the order is entered.

Geraldine contends that the trial court's August 2005 order, which concluded that Charles should pay a percentage of his net pension rather than a percentage of his gross pension was a modification that violated Ind. Code § 31-15-7-9.1. We disagree.

The Indiana Supreme Court has noted that a dissolution court has “the necessary and usual powers essential to effectuate th[e marital] dissolution, [which] include[s] the power to interpret the court's own decree.” Fackler v. Powell, 839 N.E.2d 165, 167 (Ind. 2005) (quoting Behme v. Behme, 519 N.E.2d 578, 582 (Ind. Ct. App. 1988), reh'g denied). Further, this court has observed that “a trial court does not abuse its discretion when it corrects a judgment to make that judgment conform to the intent of the trial court in entering the judgment in the first instance.” Lankenau v. Lankenau, 174 Ind. App. 45, 48, 365 N.E.2d 1241, 1243 (1977). In Lankenau, we held that Ind. Code § 31-15-7-9.1 (formerly Ind. Code § 31-1-11.5-17) did not impose “any obstacle on a court from correcting its judgment to reflect the true intention of the court at the time the judgment was entered.” Id. at 49, 365 N.E.2d at 1244.

A judgment is construed in the same manner as a contract. Flynn v. Barker, 450 N.E.2d 1008, 1009 (Ind. Ct. App. 1983), cert. denied, 469 U.S. 934, 105 S. Ct. 334 (1984). The language of a judgment is ambiguous where it would lead two reasonable persons to different conclusions as to its effect and meaning. Id. When construing the language of a judgment, the Court will attempt to read the provisions of the judgment so as to render all of them effective and not mere surplusage. Id.

Here, the dissolution decree provided: “It is the Court's intention that Geraldine should receive 25% of the retirement benefits receivable by Charles from his Navy

pension, in order to make the distribution of property which the Court believes is equitable in this case.” Appellant’s Appendix at 26. Further, the decree provided: “Charles shall pay to Geraldine future payments based upon a percentage of Charles’ retirement benefits receivable from his Navy retirement benefits if, as and when Charles receives his retirement benefits. Said payment shall be equivalent to 25% of the retirement benefits paid to Charles.” Id. In August 2005, the trial court interpreted the decree at Geraldine’s request and concluded: “Based upon a review of the pleadings submitted, the Court concludes that [Charles’s] obligation to pay to [Geraldine] 25% of his navy pension, upon receipt, should be based upon the net receipt, after taxes, because that is what he ‘receives.’” Id. at 12.

The trial court’s intention in the decree was that Geraldine be paid twenty-five percent of the retirement benefits “receivable” by Charles. Id. at 26. Given this intention, the trial court interpreted the decree to mean that Charles must pay a percentage of his net pension to Geraldine because that is what he “receives.” Id. at 12. Consequently, the trial court did not modify the decree in violation of Ind. Code § 31-15-7-9.1. Rather, the trial court was properly using its power to interpret its own decree.

As for whether the trial court’s interpretation of the decree was an abuse of discretion, we note that Geraldine cites no authority for the proposition that the trial court was required to base the percentage on Charles’s gross pension rather than his net

pension.¹ Moreover, given the language of the decree, we cannot say that the trial court's interpretation was an abuse of discretion. Consequently, we conclude that the trial court did not abuse its discretion by ordering Charles to pay Geraldine a percentage of his net pension rather than a percentage of his gross pension. See, e.g., Shively v. Shively, 680 N.E.2d 877, 882-882 (Ind. Ct. App. 1997) (holding that the trial court improperly calculated the former husband's arrearage based upon his gross, rather than his net, retirement pay).

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.

BARNES, J. and VAIDIK, J. concur

¹ In fact, Geraldine cited no cases whatsoever. In particular, we remind Geraldine that Ind. Appellate Rule 46(A)(8)(b) requires an appellant to include a "concise statement of the applicable standard of review," which Geraldine failed to do.