VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 11th day of April, 2024.

Present: Goodwyn, C.J., Powell, Kelsey, McCullough, Chafin, and Mann, JJ., and Millette, S.J.

ANDREW RYAN YOUNKLE, APPELLANT,

against Record No. 230204
Court of Appeals No. 1165-21-4

SUZANNE MARIE SCHILLMOELLER, APPELLEE.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
COURT OF APPEALS OF VIRGINIA.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of the opinion that there is reversible error in the judgment of the Court of Appeals.

Andrew Ryan Younkle and Suzanne Marie Schillmoeller married in 1999. After ten years of marriage, the parties signed a Marital Separation Agreement (MSA), dated August 13, 2009, which was drafted from a basic internet template without the assistance of counsel. In the MSA, in a section labeled "Spousal Support," the parties specified that the spousal support award from Younkle to Schillmoeller would be $0. However, in the same Spousal Support section was typed the statement that, "[a]lso, [Younkle] agrees that [Schillmoeller] shall have 50% of [Younkle's] military retirement, when a military retirement is earned by [Younkle]." The MSA was incorporated into the parties' April 20, 2010 Final Decree of Divorce.

Younkle served over eight years on active duty in the military during the marriage. At the time of the divorce, Younkle was no longer on active duty in the military, and worked for the State Department as a civilian employee. After the parties' divorce, Younkle returned to active-duty service in the military and continues to serve on active duty up to the present.

In 2020, Schillmoeller contacted the United States military to initiate the receipt of her share of the military retirement she anticipated Younkle would receive. Subsequently, Younkle filed a declaratory judgment action in the Fairfax County Circuit Court, seeking a determination

that the section of the MSA "awarding [Schillmoeller] 50% of [Younkle]'s military retirement is [not enforceable since it was spousal support which] terminated by operation of law [following Schillmoeller's 2012 remarriage]."

In the alternative, Younkle asserted that to the extent Schillmoeller was entitled to an award from his military retirement pay, such award to Schillmoeller should be limited to the value of military retirement pay earned during the marriage, and should not include military retirement pay increases earned due to advancement in rank and his active-duty service after the divorce. Younkle noted that he had gone back on active duty in the military after the divorce, had served more than ten additional years on active duty since the divorce, and was still on active duty, and planned to remain on active duty for many more years to come.

A hearing regarding the declaratory judgment action was scheduled by the circuit court. Prior to that hearing, Schillmoeller submitted a "Notice & Motion for Entry of Military Retired Pay Division Order," noting therein that she was to receive 50% of Younkle's disposable retired pay. Within that motion, Schillmoeller noted that disposable retired pay has been defined as "a Member's retired pay based on the Member's creditable service and high-3 *as of the date of divorce*." (Emphasis added).

On July 29, 2021, the circuit court conducted a hearing at which it received no evidence. The circuit court found the language of the MSA to be unambiguous, rejecting Schillmoeller's request to present parol evidence. After the hearing, the circuit court concluded that the MSA provision "providing 50% of [Younkle]'s military retirement is spousal support; and [that] said spousal support payable to [Schillmoeller] terminated by operation of law . . . when [Schillmoeller] remarried . . . ."

On appeal to the Court of Appeals, Schillmoeller argued that the MSA provision regarding military retirement pay was ambiguous regarding whether it was intended as spousal support or as a distribution of an asset, and that the circuit court erred in determining the provision was spousal support without considering any evidence.

The Court of Appeals disagreed with Schillmoeller that the MSA was ambiguous, but concluded that the unambiguous MSA provision, regarding Younkle's military retirement pay, was intended as a division of marital property and was not intended as spousal support which would have terminated upon Schillmoeller's remarriage. Based on its interpretation of the MSA, as clearly stating that the payment of the military retirement was intended as the distribution of

marital property, the Court of Appeals reversed the trial court and awarded Schillmoeller 50% of Younkle's retirement pay.

The Court of Appeals held "that the MSA classifies [Younkle]'s military retirement pay as a marital asset, subject to equitable distribution" and that "[Schillmoeller] maintains the right to collect her share of that marital property, notwithstanding her remarriage." The Court of Appeals noted: "Because the parties have stipulated to the 50% division of [Younkle]'s military retirement, we do not engage in the three-step analysis that is generally required to determine the marital share of a defined benefit plan."

We awarded Younkle an appeal limited to the issue of whether the Court of Appeals erred in determining that Schillmoeller was entitled to 50% of Younkle's full military retirement pay as a division of marital property.

Younkle argues that the Court of Appeals should have remanded the case to the circuit court to determine the equitable distribution of the military retirement pay as a marital asset, calculated at the time of the dissolution of the marriage and not at the date of Younkle's future retirement. Schillmoeller argues that the Court of Appeals had jurisdiction to interpret the MSA, including the amount of any award under the military retirement provision, because it is a contract.

We agree that the parties' MSA should be interpreted as a contract. *Southerland v. Southerland*, 249 Va. 584, 588 (1995); *Cooley v. Cooley*, 220 Va. 749, 752 (1980) (concluding that such agreements "entered into by competent parties upon valid consideration for lawful purposes are favored in the law and such will be enforced unless their illegality is clear and certain"). Thus, we are free to consider the terms of the MSA de novo to address the interpretation issues. *See Video Zone, Inc. v. KF&F Props. L.C.*, 267 Va. 621, 625 (2004); *Berry v. Klinger*, 225 Va. 201, 208 (1983).

> In seeking for the true interpretation of the language used, we are not tied down to the literal words . . . but must read them and interpret them in their relation to other terms and provisions of the instrument in which they occur. The subject matter of the contract . . . has always been considered a just foundation for giving the words of an instrument an interpretation, when considered relatively, different from that which they would receive in the abstract . . . The great object being to discover the intention, the court may put itself in the place of the parties, and then see how the terms of the instrument affect the property or subject matter.

Brown v. Brown, 72 Va. 502, 507 (1879) (citations omitted).

Considering the subject matter of the MSA is essential to interpreting the plain language of the provision dividing Younkle's military retirement pay. *See Carpenter v. Gate City*, 185 Va. 734, 740 (1946) (noting the Court should consider the subject matter and situation of the parties in interpreting a contract and not one provision only). We have previously recognized the "unique" nature of "agreements between spouses involving rights and obligations arising from the marital relationship." *Flanary v. Milton*, 263 Va. 20, 22 (2002). When evaluating the language used in the provisions within the MSA, in this instance, it is important to note the fact that this agreement was made within the context of the parties' intent to distribute their marital assets. *See Schillmoeller v. Younkle*, No. 1165-21-4, 2023 Va. App. LEXIS 96, at *9–11 (Feb. 14, 2023) (unpublished).

Only the military retirement which accrues during the marriage is a marital asset. *See* Code § 20-107.3(A)(2). In this case, the provision in the MSA dividing 50% of the military retirement pay clearly pertained to the potential military retirement pay that was part of the marital estate. In fact, the subject matter of the entire MSA was the division of Schillmoeller's and Younkle's marital assets.

The provision in the MSA regarding military retirement pay, in context, manifestly refers to the marital share interest that already existed at the time the MSA was executed. There is no language indicating that the military retirement pay provision was referring to or intended to include military retirement earned because of Younkle's military service after the parties' divorce; there is no language stating that Schillmoeller is entitled to 50% of Younkle's "full" or "entire" military retirement pay. Also, there is no expressed intent to entitle Schillmoeller to any non-marital share of Younkle's military retirement pay, and no indication, within the language of the MSA, that the retired military pay provision was intended to go beyond the subject matter of the rest of the agreement, which concerned allocation of the marital assets of the couple.

We conclude that the language in the military retirement pay provision of the MSA unambiguously refers to distribution of a marital asset created by Younkle's service in the military during the marriage. There is no language in the MSA indicating otherwise; retirement benefits earned by Younkle after the date of divorce are Younkle's separate property, which should not be included in the military retirement pay that Schillmoeller is entitled to receive

under the terms of the MSA. *See* Code § 20-107.3(A)(2) (defining when retirement benefits are presumed to be marital property). Pursuant to the terms of the MSA, the military retirement pay that Schillmoeller is entitled to receive is 50% of the marital share of Younkle's military retirement pay, based upon the military service Younkle provided during his marriage to Schillmoeller. To the extent the Court of Appeals ruled otherwise, it erred.

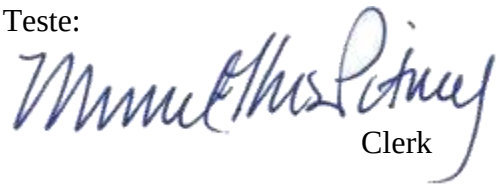
Additionally, we note that contrary to Schillmoeller's most recent arguments, she previously indicated to the circuit court that her 50% portion of Younkle's military retirement pay was limited to the marital share thereof. In the "Notice & Motion for Entry of Military Retired Pay Division Order" filed by Schillmoeller in the circuit court on May 6, 2021, Schillmoeller apparently indicates that she was to receive 50% of Younkle's disposable retired pay. In that motion, Schillmoeller defined disposable retired pay as "a Member's retired pay based on the Member's creditable service and high-3 *as of the date of divorce*." (Emphasis added).

For the reasons stated above, to the extent that the Court of Appeals' decision may be interpreted as holding that the parties' MSA military pay provision entitles Schillmoeller to receive any portion of Younkle's separate property, it is in error. Accordingly, we reverse the judgment of the Court of Appeals and remand the case to the Court of Appeals with direction that this case be remanded to the circuit court for further proceedings consistent with this order.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Fairfax County.

A Copy,

Teste:



Clerk