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DISTRICT II

November 20, 2013

To:

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You are hereby notified that the Court has entered the following opinion and order:

2013AP437

In re the marriage of: Steven R. Cooper v. Sunny R. Nelson
(L.C. # 1991FA458)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Steven Cooper's pension was divided as part of his 1992 divorce from Sunny Nelson. Cooper appeals from a circuit court order denying his petition for a declaratory judgment that his current spouse, rather than Nelson, his former spouse, will receive his share of his pension upon his death. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the circuit court. The 1992 judgment of divorce and the qualified domestic relations order

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

(QDRO) are not ambiguous and they state that Nelson will receive Cooper's share of his pension plan if she survives him.²

In 1992, Cooper and Nelson stipulated to a judgment of divorce. In that stipulation, the parties agreed that Cooper's interest in his CTS Corporation Salaried Employee's Pension Plan "shall be equally divided between the parties by Qualified Domestic Relations Order" as set forth in exhibit C to the parties' stipulation. Exhibit C provided the following: Cooper assigned to Nelson fifty percent of his interest in the CTS pension plan as of the date of the judgment of divorce and "[p]ursuant to Section 414(p)(5) of the Internal Revenue Code, [Cooper] is required to name [Nelson] as the surviving spouse and to elect a joint and survivorship annuity" for the CTS pension plan. The QDRO echoes the terms of the parties' stipulation.

Cooper and Nelson entered into new marriages. Cooper sought declaratory relief in 2012 arguing that he did not intend or agree at the time of the divorce that if he remarried or predeceased Nelson, Nelson would receive his share of the CTS pension plan as the surviving beneficiary. Rather, Cooper intended that if he remarried, his current spouse would be the beneficiary of his share of the pension plan. In support of his claim, Cooper cited references in the divorce documents to Nelson receiving fifty percent of Cooper's interest in the pension plan and Nelson's designation as an Alternate Payee and an irrevocable beneficiary of one-half of the death benefits payable under the pension plan. Cooper argues that these references prove that

² This litigation did not affect Nelson's rights in her share of Cooper's pension plan. The litigation addresses only the disposition of Cooper's share of his pension plan upon his death.

Nelson was only to receive her fifty percent of the pension plan, no matter which former spouse dies first.

Among other reasons, Nelson opposed Cooper's declaratory judgment action as an untimely attempt to modify the property division. On the merits of Cooper's claim, Nelson argued that at the time of the divorce, the parties agreed that she would receive Cooper's share of the pension plan if she survived him.

The circuit court held that the judgment of divorce was not ambiguous, and Nelson had the status of surviving spouse for the pension plan. The court cited the provisions of the parties' stipulation that the pension plan would be governed by the parties' agreement as set forth in exhibit C. Exhibit C set out that Cooper was required to name Nelson as the surviving spouse and to elect a joint and survivorship annuity for the pension plan. The QDRO incorporated these provisions, and the Internal Revenue Code provisions cited in exhibit C support the surviving spouse status conferred upon Nelson at the time of the divorce. Because the documents were not ambiguous, the court declined to consider Cooper's intent at the time of the divorce and denied Cooper's declaratory judgment action. Cooper appeals.

Whether to grant relief in a declaratory judgment action is within the circuit court's discretion. *Wisconsin Educ. Ass'n Council v. State Elections Bd.*, 156 Wis. 2d 151, 161, 456 N.W.2d 839.

"A divorce judgment that is clear on its face [and not ambiguous] is not open to construction." *Washington v. Washington*, 2000 WI 47, ¶17, 234 Wis. 2d 689, 611 N.W.2d 261. "Divorce judgments are to be construed as of the time of entry and in the same manner as other written instruments." *Id.* (footnotes omitted). A judgment is ambiguous only if it "is

subject to two or more meanings.” *Id.*, ¶18. Whether a judgment is ambiguous presents a question of law. *Id.*

On appeal, Cooper argues that the references in the divorce documents to Nelson’s fifty percent share of the pension plan suggest that she should be limited to that amount under all circumstances. Cooper overlooks that the parties agreed to designate Nelson as the surviving spouse for purposes of the pension plan, Cooper elected a joint and survivorship annuity, and the cited provisions of the Internal Revenue Code are consistent with this arrangement. The parties’ unambiguous agreement as expressed in the divorce documents cannot be overlooked or disregarded. In the absence of ambiguity, the judgment of divorce cannot be construed in light of Cooper’s claimed intent. *Washington*, 234 Wis. 2d 689, ¶17.

The circuit court did not erroneously exercise its discretion when it denied Cooper’s declaratory judgment action.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals