

Workman, J., dissenting:

I disagree with the majority's opinion that the Property Settlement Agreement is ambiguous. The Agreement clearly states, in pertinent part, "Melanie shall retain and keep possession of the residential premises of the parties, situate in Boulder Park, Princeton, Mercer County, West Virginia. . . . Melanie shall have the sole right to market and agree to the sale of said residential premises. . . ."

Nothing in the Agreement provides that the home shall be sold upon the child's emancipation. The lower court concluded that nothing in the agreement *precluded* the marital residence from being sold upon the child reaching 18 years of age. However, I would note that nothing in the agreement *mandated* the sale of the marital residence upon the child's majority. The majority finds the failure of the Agreement to state a time when the residence was to be sold renders the Agreement ambiguous. However, the Agreement is not silent on this issue. The Agreement expressly provides that Melanie shall retain possession of the home and shall have the sole right to market the sale of the home.

This Court has consistently held that a valid written agreement using plain and unambiguous language is to be enforced according to its plain intent and should not be construed. *See Clint Hurt & Associates, Inc. v. Rare Earth Energy, Inc.*, 198 W.Va. 320, 480 S.E.2d 529 (1996), *Dawson v. Norfolk and Western Ry. Co.*, 197 W.Va. 10, 475 S.E.2d 10 (1996), *VanKirk v. Green Const. Co.*, 195 W.Va. 714, 466 S.E.2d 782 (1995), *Watts v. West Virginia Dept. of Health and Human Resources/Division of Human Services*, 195 W.Va. 430, 465 S.E.2d 887 (1995), *HN Corp. v. Cyprus Kanawha Corp.*, 195 W.Va. 289, 465 S.E.2d 391 (1995), *Raines v. White*, 195 W.Va. 266, 465 S.E.2d 266 (1995), *Akers v. West Virginia Dept. of Tax and Revenue*, 194 W.Va. 456, 460 S.E.2d 702 (1995), *Scyoc v. Holmes*, 192 W.Va. 87, 450 S.E.2d 784 (1994), *Fraley v. Family Dollar Stores of Marlinton, West Virginia, Inc.*, 188 W.Va. 35, 422 S.E.2d 512 (1992), *Billiter v. Melton Truck Lines, Inc.*, 187 W.Va. 526, and 420 S.E.2d 286 (1992), *Sally-Mike Properties v. Yokum*, 175 W.Va. 296, 332 S.E.2d 597 (1985).

As the Agreement was not ambiguous, the lower court should not have used parole evidence to alter the terms of the contract. In this case, the lower court created an ambiguity which did not exist in order to alter the terms of the parties' agreement. "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of parties as expressed in unambiguous

language in their written contract or to make a new or different contract for them.” Syl. pt. 1, *Payne v. Weston*, 195 W.Va. 502, 466 S.E.2d 161 (1995).

It appears that the court here determined that there was an ambiguity in order to render what the court believed to be a fairer result. Perhaps it was fairer. But that is not the proper role of a court. Both of these parties were represented by lawyers in the negotiation of this agreement, and presumably the husband's lawyer should have been sufficiently competent to have included in the agreement the provision which the court imposed, if that was the intention of the parties at the time of the making of the agreement. Courts should not be in the clean-up business for lawyers.

Contracts containing unambiguous language must be enforced according to their plain and natural meaning. The Property Settlement Agreement plainly states that Melanie has the sole right to place the home on the market. The lower court's conclusion that the Agreement compelled Melanie to sell the home upon the child's emancipation is clearly contrary to the unequivocal language of the contract.