

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2011 Term

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No. 101605

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**FILED**

**November 21, 2011**

**released at 3:00 p.m.**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

PATRICIA E. LEE,  
Respondent Below, Petitioner

v.

CHARLES W. LEE,  
Petitioner Below, Respondent

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Appeal from the Circuit Court of Upshur County  
Honorable Thomas H. Keadle, Judge  
Civil Action No. 09-D-137

REVERSED AND REMANDED WITH DIRECTIONS

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Submitted: September 27, 2011

Filed: November 21, 2011

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE DAVIS and JUSTICE MCHUGH dissent and reserve the right to file dissenting opinions.

## SYLLABUS BY THE COURT

1. “In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.” Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).

2. “The mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court.” Syllabus Point 1, *Berkeley County Public Service Dist. v. Vitro Corp. of America*, 152 W. Va. 252, 162 S.E.2d 189 (1968).

3. “Contract language is considered ambiguous where an agreement’s terms are inconsistent on their face or where the phraseology can support reasonable differences of opinion as to the meaning of words employed and obligations undertaken.” Syllabus Point 6, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 212 W. Va. 275, 569 S.E.2d 796 (2002).

Per Curiam:

This case is before this Court upon appeal of a final order of the Circuit Court of Upshur County entered on October 15, 2010, in this divorce action between Patricia E. Lee, the petitioner herein and respondent below (hereinafter “Mrs. Lee”), and Charles W. Lee, the respondent herein and petitioner below (hereinafter “Mr. Lee”). In that order, the circuit court denied Mrs. Lee’s appeal of a July 7, 2010, order of the Family Court of Upshur County. The family court found that Mrs. Lee was no longer entitled to reside in the marital residence pursuant to the parties’ prenuptial agreement.

In this appeal, Mrs. Lee contends that she did not enter into “another relationship” as contemplated by the prenuptial agreement and, therefore, continues to have the right to occupy the marital home. This Court has before it the petition for appeal, the response thereto, the entire record, and the arguments of counsel. For the reasons set forth below, the final order is reversed, and this case is remanded for entry of an order consistent with this opinion.

## **I.**

### **FACTS**

The parties met in 2005 and were married on July 28, 2007.<sup>1</sup> They separated on June 12, 2009, after Mr. Lee disclosed that he was having an extramarital affair. The parties' divorce was granted on the grounds of irreconcilable differences. This appeal concerns the prenuptial agreement which the parties signed shortly before they were married.

According to Mrs. Lee, Mr. Lee advised her two weeks before their wedding day that he would not marry her unless she signed a prenuptial agreement. Mr. Lee maintains that he had told Mrs. Lee that he wanted a prenuptial agreement before he gave her an engagement ring. In any event, Mr. Lee initially presented a prenuptial agreement to Mrs. Lee that he found on the internet. Thereafter, the parties spent approximately seventeen hours negotiating the terms of the agreement, but Mr. Lee primarily drafted and typed the document. Neither party had the benefit of counsel in drafting, negotiating, or reviewing the agreement.

At issue in this case is the provision in the prenuptial agreement concerning spousal support which states as follows:

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<sup>1</sup>The parties lived together for more than two years before they were married.

In the event that there is a separation of the parties, the following will occur regarding spousal support:

-In the event of separation, Charles will provide Patti housing at no cost at Route #9, Box 368, Buckhannon<sup>2</sup> until she decides to move or until she enters into another relationship. The provision of housing will include basic and “nationwide” phone service for the same period of time. As well as all other household expenses, with a limit of \$500.00 per month, until such time as her minor children graduate from high school.

-Patti will be provided one of the family vehicles in the event of separation or divorce. She will be responsible for maintaining it and its continued operation.<sup>3</sup>

(Footnotes added). Mrs. Lee has a daughter from a previous marriage who was eight years old when the prenuptial agreement was signed.<sup>4</sup> After the parties separated, Mrs. Lee continued to live in the marital home in accordance with the prenuptial agreement.

During the divorce proceedings, the parties disputed the meaning of the phrase “another relationship” as set forth in the spousal support provision of the prenuptial agreement. Mr. Lee asserted that Mrs. Lee had already entered into another relationship and, therefore, was required to move out of the marital residence. He testified that he believed that another relationship meant “a romantic involvement or just a traditional sense of being

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<sup>2</sup>The marital residence was not jointly owned by the parties; rather, it had been purchased by Mr. Lee before the marriage.

<sup>3</sup>The portion of this provision concerning the family vehicles is not at issue in this case.

<sup>4</sup>It appears from the record that Mrs. Lee has two older children.

with another partner.” By contrast, Mrs. Lee stated that she understood “another relationship” to mean a relationship similar in character and duration to the one she had shared with Mr. Lee that would provide her financial security and a place to live.

The family court afforded the phrase “another relationship” broad construction in accordance with Mr. Lee’s testimony and found that Mrs. Lee had entered into another relationship as contemplated by the agreement. In fact, the family court found that Mrs. Lee had entered into such relationships with three different men, all of whom had spent overnights in the marital home after the parties separated.<sup>5</sup> Consequently, the family court ordered Mrs. Lee to vacate the marital home in its July 7, 2010, order.

Following entry of the family court order, Mrs. Lee filed an appeal with the circuit court. Upon review, the circuit court found that the phrase “another relationship” as

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<sup>5</sup> A complete transcript of the hearing below was not included in the record submitted to this Court. The orders and the briefs of the parties indicate that the family court found that Mrs. Lee had a one night sexual relationship with a man identified as J. Shelly based on the testimony of Chris Cutright, the fiancé of Mrs. Lee’s older daughter. Mr. Cutright testified that Mrs. Lee brought J. Shelly home one night and that he heard various noises in the next room that led him to believe that they had sexual relations. It also appears that evidence was presented that Mrs. Lee had spent extended periods of time with a man named Rodney Stalnaker at his residence. Finally, the court found that Mrs. Lee had a relationship with a man named Jim Walker, a resident of Kentucky whom Mrs. Lee met through an internet dating service. Mrs. Lee denied having sexual relationships with J. Shelly and Rodney Stalnaker. She acknowledged that she had dated Jim Walker for a short period of time, but maintained that the sexual component of their relationship occurred in Kentucky.

used in the prenuptial agreement is ambiguous. The circuit court further concluded, however, that the family court did not err by finding that Mr. Lee's representations as to the parties' intent with regard to the spousal support provision were more credible than those of Mrs. Lee. The circuit court also found that the evidence in the record supported the family court's finding that Mrs. Lee had entered into relationships as contemplated in the prenuptial agreement with three men after the parties separated. Accordingly, the circuit court denied Mrs. Lee's appeal by order entered on October 15, 2010. This appeal followed.

## **II.**

### **STANDARD OF REVIEW**

As set forth above, Mrs. Lee is appealing a circuit court order denying her petition for appeal of a family court order. This Court has explained that

[i]n reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004). As discussed, the issue in this case concerns a provision in the parties' prenuptial agreement. This Court has advised that "[w]hen a trial court determines that an agreement is ambiguous and construes the meaning of a provision in the contract based on extrinsic evidence, such as the parties' intent,



our standard of review is ‘clearly erroneous.’” *Jessee v. Aycoth*, 202 W. Va. 215, 218, 503 S.E.2d 528, 531 (1998). With these standards in mind, the parties’ arguments will be considered.

### **III.**

#### **DISCUSSION**

The issue in this case is very straight-forward: what is the meaning of the phrase “another relationship” as used in the parties’ prenuptial agreement? The parties’ arguments in this appeal mirror the ones made during the proceedings below. In other words, Mrs. Lee asserts that “another relationship” means a committed relationship akin to the one she had with Mr. Lee. To the contrary, Mr. Lee argues that the phrase “another relationship” simply contemplates a dating or sexual relationship. Mrs. Lee has admitted that she had a brief dating and sexual relationship with another man since the parties separated. In that regard, she testified during the proceedings below that she met a man through a social internet service. She stated that she spent approximately ten days with him during the course of three or four visits to his home in Kentucky. She further testified that the sexual component of this relationship occurred in Kentucky. Mrs. Lee has denied that she has had a sexual relationship with any other man since the parties separated.

Upon review, this Court agrees with the circuit court to the extent that it found that the phrase “another relationship” as used in the parties’ prenuptial agreement is ambiguous. It is well-established that “[g]eneral contract law governs prenuptial agreements.” *Gant v. Gant*, 174 W. Va. 740, 745, 329 S.E.2d 106, 112 (1985), *overruled on other grounds by Ware v. Ware*, 224 W. Va. 599, 687 S.E.2d 382 (2009). Under our basic rules of construction, “[t]he mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court.” Syllabus Point 1, *Berkeley County Public Service Dist. v. Vitro Corp. of America*, 152 W. Va. 252, 162 S.E.2d 189 (1968). Generally, whenever the language of a contractual provision is reasonably susceptible of two different meanings or where reasonable minds might be uncertain or disagree as to its meaning, it is ambiguous. Syllabus Point 1, *Shamblin v. Nationwide Mut. Ins. Co.*, 175 W. Va. 337, 332 S.E.2d 639 (1985). Stated another way, “[c]ontract language is considered ambiguous where an agreement’s terms are inconsistent on their face or where the phraseology can support reasonable differences of opinion as to the meaning of words employed and obligations undertaken.” Syllabus Point 6, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 212 W. Va. 275, 569 S.E.2d 796 (2002). Under the circumstances presented here, it is clear that reasonable minds could differ with respect to the meaning of the phrase “another relationship.” In fact, in today’s world, the term “relationship” has multiple meanings depending upon the context in which it is used.

“In order to resolve ambiguity in a contract, the intent of the parties must be ascertained.” *Harris v. Harris*, 212 W. Va. 705, 709, 575 S.E.2d 315, 319 (2002). As this Court has explained:

If an inquiring court concludes that an ambiguity exists in a contract, the ultimate resolution of it typically will turn on the parties’ intent. Exploring the intent of the contracting parties often, but not always, involves marshaling facts extrinsic to the language of the contract document. When this need arises, these facts together with reasonable inferences extractable therefrom are superimposed on the ambiguous words to reveal the parties’ discerned intent.

*Fraternal Order of Police, Lodge Number 69 v. City of Fairmont*, 196 W. Va. 97, 101 n. 7, 468 S.E.2d 712, 716 n. 7 (1996). However, “in case of doubt, the construction of a written instrument is to be taken strongly against the party preparing it.” *Henson v. Lamb*, 120 W. Va. 552, 558, 199 S.E. 459, 461-62 (1938). In other words, the ambiguous terms should be construed in such a manner as to effectuate the intention of the parties, but where the evidence pertaining to the parties’ intent conflicts, the ambiguous terms should be construed against the party who drafted the document. See Syllabus Point 4, *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W. Va. 734, 356 S.E.2d 488 (1987), *overruled on other grounds by Potesta v. U.S. Fidelity & Guaranty Co.*, 202 W. Va. 308, 504 S.E.2d 135 (1998) (holding that ambiguous terms in insurance contracts are strictly construed against the insurance company and in favor of the insured); Syllabus Point 3, *West Virginia Dept. of Highways v. Farmer*, 159 W. Va. 823 226 S.E.2d 717 (1976) (holding that where an ambiguity exists in a deed, the language of such deed will be construed most strongly against the grantor).

As previously discussed, the parties in this case gave conflicting testimony regarding their understanding of the meaning of “another relationship” as set forth in the prenuptial agreement. The evidence clearly established, however, that the prenuptial agreement was entered into at Mr. Lee’s insistence and that he ultimately drafted the ambiguous spousal support provision. During the evidentiary hearing below, Mr. Lee testified that while Mrs. Lee had requested that a paragraph be added to the prenuptial agreement that would allow her to live in the marital residence in the event they separated until her daughter reached the age of eighteen, he actually drafted the provision. In fact, he specifically acknowledged that he came up with the phrase “another relationship.” Despite the fact that Mr. Lee testified that he drafted the prenuptial agreement, the family court construed the phrase “another relationship” in Mr. Lee’s favor and completely disregarded Mrs. Lee’s testimony.<sup>6</sup>

Upon review, this Court finds that the family court clearly erred by construing the spousal support provision in the prenuptial agreement in Mr. Lee’s favor and adopting his interpretation of the phrase “another relationship.” The family court made no finding with regard to whether the agreement was or was not ambiguous, although it clearly seems

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<sup>6</sup>Mrs. Lee testified that she asked Mr. Lee if the provision in question meant that she had to remain celibate until her daughter was eighteen years old and that he replied, “Of course not, I just don’t want some guy living in my house.” Mr. Lee testified that he did not remember this specific conversation, but he did not deny it.

to fit within the definition of that term as set forth above. Syllabus Point 6, *Frazier*, *supra*. Although the circuit court found the agreement to be “patently ambiguous,” it concluded that the family court did not abuse its discretion by declining to construe the ambiguity against Mr. Lee. Relying upon cases from other jurisdictions,<sup>7</sup> the circuit court based this conclusion on a rule of construction whereby an ambiguity is construed against the party preparing the agreement only after the finder of fact has tried and failed to ascertain the parties’ intent in an ambiguous agreement. As set forth above, our case law provides that “in case of doubt, the construction of a written instrument is to be taken strongly against the party preparing it.” *Henson*, 120 W. Va. at 558, 199 S.E. at 461-62. Moreover, the family court was only able to ascertain the parties’ intent in this case by making a credibility determination. The family court clearly abused its discretion by finding Mr. Lee’s representations as to the parties’ intent more credible than those of Mrs. Lee in view of the fact that their testimonies were diametrically opposed and there was no evidence reflecting an ongoing relationship involving cohabitation. Had Mrs. Lee entered into a sexual relationship involving cohabitation at the marital residence, then the credibility determination may have been appropriate. However, based on the evidence presented and pursuant to our rules of construction, the family court should have construed the ambiguous provision in Mrs. Lee’s favor and found that the

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<sup>7</sup>See *Klapp v. United Ins. Group Agency*, 663 N.W.2d 447 (Mich. 2003); *Unit Vending Corp. v. Lacas*, 190 A.2d 298 (Pa. 1963).

evidence did not establish that she had entered into “another relationship.” Accordingly, the final order of the circuit court is reversed.

#### **IV.**

#### **CONCLUSION**

For the reasons set forth above, the final order of the Circuit Court of Upshur County is reversed, and this case is remanded to the Family Court of Upshur County for entry of an order consistent with this opinion.

Reversed and Remanded with Directions.