

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-486

MAY TERM, 2002

	}	APPEALED FROM:
	}	
Gerald Stone	}	Lamoille Family Court
	}	
v.	}	DOCKET NO. 68-5-94 Ledm
	}	
Linda K. Stone	}	Trial Judge: Howard E. VanBenthuyesen
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Husband appeals from a family court order granting wife's motion to enforce the spousal maintenance provision of the parties' divorce judgment. Husband contends: (1) the evidence failed to support the court's determination that husband had not retired within the meaning of the divorce decree; and (2) extrinsic evidence of the parties' intent should not have been considered in determining the meaning of the decree. We affirm.

The parties married in 1965 and divorced in 1994. During the marriage, husband worked as a minister for the United Church of Christ. Wife, also an ordained minister, worked part-time. Attached to and incorporated into the divorce decree was a Memorandum of Understanding that addressed certain issues, including spousal maintenance. It provided in this regard as follows:

[Husband] will pay to [wife] an amount of \$400 per month spousal maintenance monthly, beginning May 1, 1994. [Husband's] spousal maintenance obligation as set forth above shall terminate upon [wife's] remarriage, or upon [husband's] retirement from the Church, or upon the occasion of [wife] receiving an inheritance of an amount in excess of \$100,000, whichever first occurs.

Husband paid spousal maintenance under the terms of the decree until September 1999, when at the age of fifty-eight he voluntarily terminated his employment with the Church and unilaterally stopped the spousal support payments. Wife, in response, moved to enforce the spousal maintenance obligation, arguing that husband had not retired from the Church within the meaning of the decree, since he had not yet begun to receive any portion of his retirement pension. It was also undisputed that wife had neither remarried nor received any inheritance.

Following a hearing, the court ruled in favor of wife. Although wife testified that the parties had specifically contemplated that husband would retire at age sixty-two, and husband denied such an intent, the court found that the maintenance provision was unambiguous and required no resort to extrinsic evidence. Referencing the definition of "retire" contained in Black's Law Dictionary as "to terminate employment or service upon reaching retirement age," the court concluded that the provision plainly contemplated husband's payment of maintenance until the "normal" retirement age which starts at sixty-two. The court also found that a contrary conclusion would "completely frustrate the meaning and purpose of that provision" by allowing husband to terminate maintenance payments merely by quitting the ministry the day after the divorce judgment became final. Accordingly, the court granted the motion to enforce, ordered husband to pay arrearages totaling \$10,400, but ruled that husband may terminate payments should he formally retire at age sixty-two and begin drawing pension benefits. This appeal followed.

Husband contests the court's interpretation, arguing that "retirement from the Church" unambiguously referred to his

termination of employment regardless of his age or receipt of pension benefits. He also asserts that the evidence failed to support the court's findings that husband continued to make contributions to his retirement plan after he terminated his employment, that husband remained an ordained minister eligible to return to the ministry, and that husband was technically not retired in the view of the Church because he was not receiving pension benefits. Although the record supports these findings, they were not contrary to husband's assertion essential to the court's ruling, which was based on its conclusion that the meaning of the maintenance provision was clear and unambiguous.

Nevertheless, husband's assertion that "retirement," standing alone, may be susceptible to more than one reasonable interpretation is undeniable. It may, as the trial court noted, import the concept of terminating employment upon reaching a certain age, generally considered to be between sixty-two and sixty-six years, see *Haynes v. Golub Corp.*, 166 Vt. 228, 238 (1997) (referring to "normal retirement age of sixty-five years"), or it may refer more generally to withdrawal from employment, see *Webster's New Int'l Dictionary* 2128 (2d ed. 1955) (defining retirement as "[w]ithdrawal from office, active service, or the like"). We agree with the court, however, that viewed in context the provision plainly contemplated a time when husband would withdraw from the Church at the normal retirement age and draw a pension. See *Isbrandtsen v. North Branch Corp.*, 150 Vt. 575, 578-79 (1988) (determination of existence of ambiguity must be made in light of context and circumstances of agreement). The overall provisions of the divorce decree including that of the maintenance provision demonstrate an intent to equalize the parties' income, so that maintenance would cease when wife who was employed only part-time at the time of the judgment either remarried or received an inheritance, or when husband's income decreased by virtue of drawing a pension rather than a salary. The evidence also supported the court's finding that normal retirement within the Church was sixty-five, but that wife had conceded payments might end with retirement at sixty-two. Accordingly, we discern no basis to disturb the judgment.

Husband also contends that because the maintenance provision was unambiguous, wife's testimony concerning the parties' discussions at the time of the divorce should not have been considered. The court expressly disclaimed any reliance on this portion of wife's testimony. Accordingly, we discern no error.

Affirmed.

BY THE COURT:

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice