Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-046

MAY TERM, 2019

John Layton v. Mary Layton*	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	
	}	DOCKET NO. 448-10-08 Wrdm
		Trial Judge: Elizabeth D. Mann

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

Wife appeals pro se from the trial court's order in this post-divorce proceeding. She argues that the court misinterpreted the terms of the parties' stipulated divorce order. We affirm.

The parties divorced in December 2008 and the court incorporated the parties' stipulation into the final divorce order. The parties jointly owned a residence in Norwich, Vermont, which was appraised by the town at $416,000 with an estimated market value of $375,000 as reflected in a 2007 private appraisal. The parties stipulated to the following division of this asset:

> Real Estate Division:
>
> . . . . Mary Layton's obligation to John Layton under this plan would be $125,000. The payment arrangement will be as follows: The total payment to John will be made in three increments. The first increment will be in the amount of twenty five thousand dollars. Payment will be due when the following two conditions are satisfied. One, that the divorce is final. Two, that Mary has in good faith actively worked toward and obtained at least one leased tenancy in the family home. At this point in time she will obtain a mortgage in the amount of $25,000. One year from the date of the first payment the second increment of $65,000 will be due. The third increment of $35,000 will be paid in full within a five year period starting on the same date that the second increment has been paid. Mary will owe 4% in annual interest on the $35,000 owed to John, starting on the date that the second increment is due. If it is not possible for Mary to obtain financing for the second increment the home will be put on the market and when sold the total remaining amount of $100,000 owed to John will be paid in full. If at the end of the five year period the third increment has not been paid in full, the terms of repayment will be renegotiated. One third of the cost of financing fees will be paid by John and two thirds by Mary.

> Ownership of the residence will be transferred to Mary after the divorce is final and after the first incremental payment has been paid. In the event that Mary dies before the full payment has been made this amount will be owed from her estate.

The parties' divorce became final on January 20, 2009. Wife made no payments to husband, although he asked for such payment. In late July 2018, wife filed a motion to enforce the decree and a request for discovery regarding husband's finances. She invoked the provision in the final order that she characterized as a "requirement for renegotiating after five years." Husband then filed a motion to enforce of his own, noting that he had not received any of the $125,000 owed under the final decree.

The court denied wife's motion seeking discovery, finding husband's financial condition irrelevant to the issue before it. The court explained that there was no question of any payment due from husband and thus his ability to pay was not at issue. The question before the court was enforcement of wife's obligation to pay husband $125,000 for his interest in the marital estate. The court directed the parties to engage in mediation, which they did. The parties then submitted a Memorandum of Understanding (MOU) to the court regarding the payment of the first installment. The court approved the MOU, and wife paid husband $25,000 and husband conveyed to wife the deed on November 9, 2018.

The parties continued to disagree about their obligations going forward. Wife filed a "motion for default" seeking to extinguish husband's interest based on his refusal to respond to her discovery requests. Husband again moved to enforce. Wife responded by arguing that it would be unfair to require her to pay the remaining balance given the parties' respective financial circumstances and given her financial contributions to the value of the home.

Following a hearing, the court granted husband's request and denied wife's motion. It explained that, with limited exceptions, a property distribution in a final divorce order is not subject to modification. The trial court had determined in 2008 that the distribution of the marital estate was equitable and the court could not now modify wife's $125,000 obligation to husband. The court further found that, pursuant to the terms of the parties' agreement, renegotiation was allowed only with respect to the third payment of $35,000, and only if it remained unpaid at the end of the five years. The court reiterated that there was no basis for a discovery order because the final divorce order could not be modified and information concerning husband's finances was not relevant to enforcement of the original judgment. The court thus held that wife owed the second installment of her debt by November 9, 2019 (one year from her payment of the first installment), and the third payment would have to be made within five years of that date. Wife filed a motion to reconsider, which was denied. This appeal followed.

Wife asserts that the court misinterpreted the parties' agreement. She contends that the agreement allows for renegotiation of the entire debt because the third increment has not been paid within the "seven-year schedule" provided in the agreement. Wife apparently further understands the provision to require renegotiation not only of the payment terms with respect to the remaining balance, but of the amount of her principal obligation itself. She argues that renegotiation requires mutual current discovery so the parties can assess their relative financial positions. Wife also suggests that the court equivocated in its interpretation of the stipulation, citing language in entry orders that predated the final order in this case.

At the outset, we reject wife's assertion that the court equivocated in its interpretation of the stipulated final divorce order. The court repeatedly stated in its final order, and on

reconsideration, that the amount due could not be modified and that the terms of the agreement were clear and unambiguous. In any event, we review without deference the court's interpretation of the parties' agreement. See Sumner v. Sumner, 2004 VT 45, ¶ 9, 176 Vt. 452 ("We have used contract principles to construe divorce decrees based on stipulations."); John A. Russell Corp. v. Bohlig, 170 Vt. 12, 16 (1999) (reciting that question of whether contract is ambiguous presents question of law, as does interpretation of unambiguous contract). "Where the language of the decree is unambiguous, we apply it according to its terms." Sumner, 2004 VT 45, ¶ 9; see also Duke v. Duke, 140 Vt. 543, 546 (1982) ("Where the language is clear, the parties to a contract are bound by the common meaning of the words which they chose to express the content of their understanding.").

We find the language at issue here to be clear and unambiguous. The stipulated order plainly requires wife to pay husband $125,000 for his share of the marital estate. This amount is not negotiable. The obligation is unequivocally stated, i.e., "Mary Layton's obligation to John Layton under this plan would be $125,000." As reflected above, this sum is to be paid in three increments. Wife has now paid the initial installment and thus, "[o]ne year from the date of the first payment the second increment of $65,000 will be due." If this payment is not made, the marital home is to be sold and husband provided the remaining $100,000.

The language directing the parties to renegotiate plainly applies only to a failure to make the third payment: "If at the end of the five year period the third increment has not been paid in full, the terms of repayment will be renegotiated." The order not only expressly references failure to pay "the third increment" in establishing the obligation to renegotiate, but it ties the obligation to renegotiate to "the five year period." The five-year period begins "on the same date that the second increment has been paid." Moreover, the agreement provides a distinct mechanism for failing to pay the second installment by providing that if the second payment is not timely made, then the house shall be sold and the remaining obligation from wife to husband will be satisfied from the sale of the home. The five-year period has not yet begun here because the second payment has not yet been made, and any obligation to renegotiate the terms of the final payment has not yet attached.

In addition, wife's discovery requests would be inappropriate in any event. The "renegotiation" provision cannot be reasonably construed to reopen the question of the amount of wife's obligation to the final divorce order, as opposed to the "terms" of the repayment schedule. We enforce the plain language of this agreement according to its terms. Sumner, 2004 VT 45, ¶ 9. Although wife's financial circumstances may impact her ability to meet a particular payment schedule, husband's current, post-divorce finances are not relevant to the terms-of-repayment discussion. We thus find no error in the court's decision or in its denial of wife's request for discovery. As the court found, husband's financial status is not relevant to the issue at hand.

To the extent that wife argues that the order should be modified because she cannot afford to pay husband the money owed, that argument fails. "Vermont law is clear that the court cannot modify the property disposition aspects of a divorce decree absent circumstances, such as fraud or coercion, that would warrant relief from a judgment generally." Boiselle v. Boisselle, 162 Vt. 240, 242 (1994); see also Clifford v. Clifford, 133 Vt. 341, 344-45 (1975) (explaining that "adjustment of property rights accomplished by transfer of property and payment of money over a long period" cannot be modified absent grounds for modifying ordinary judgment). "Our law places great emphasis on the finality of property divisions." Wilson v. Wilson, 2011 VT 133, ¶ 6, 191 Vt. 560 (mem.) (quotation omitted) (concluding that husband was not entitled to modify final divorce judgment based on claim of financial hardship); see also Kel Kim Corp. v. Cent. Mkts., Inc., 519 N.E.2d 295, 296 (N.Y. 1987) (recognizing, as a general rule, that "once a party to contract has

made a promise, that party must perform or respond in damages for its failure, even when unforeseen circumstances make performance burdensome"). Wife offered no grounds that would support modification of the 2008 final divorce judgment here.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice