

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-1250-MR

MARY HOLDEN (NOW CARRIGAN)

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DERWIN L. WEBB, JUDGE
ACTION NO. 19-CI-502602

FRED HOLDEN

APPELLEE

OPINION
VACATING AND REMANDING

** ** *

BEFORE: CALDWELL, A. JONES, AND McNEILL, JUDGES.

JONES, A., JUDGE: This appeal concerns the proper interpretation of a provision in the Property Settlement Agreement (“PSA”) between Mary Holden (“Mary”) and Fred Holden (“Fred”) governing the use and eventual sale of jointly owned real property. After determining that the disputed provision was unambiguous, the Jefferson Circuit Court (“family court”) construed it in Fred’s favor and, by order entered September 3, 2025, denied Mary’s motion to list the property for sale.

Because we conclude that the disputed provision is ambiguous, we vacate and remand for further proceedings.

I. BACKGROUND

Mary and Fred married in 1972. After approximately forty-seven years of marriage, Mary filed a petition for dissolution of marriage in August 2019. On February 23, 2021, the parties entered into a PSA, which the family court approved and incorporated by reference into its February 26, 2021, decree dissolving the parties' marriage.

The provision at issue concerns the parties' jointly owned farm located at 3100 Apple Hill Road in Louisville, Kentucky ("the Farm"). As to the Farm, the PSA provides:

The Parties as spouses own real property located at 3100 Apple Hill Road, Louisville, Jefferson County, Kentucky 40245, with a fair market value of \$703,000.00. Each party understands that as spouses, each enjoys a tenancy by the entirety, an estate in land shared by husband and wife whereby at the death of either, the survivor is entitled to full fee simple ownership.

The Parties understand and agree that their tenancy by the entirety will terminate upon dissolution of their marriage, including the concomitant right of survivorship to the entire estate. However, upon dissolution of their marriage, the parties understand and agree that they will continue to hold legal title to this real property as tenants in common, WITH rights of survivorship. As tenants in common the parties understand and agree that each shall have a 50% share of the tenancy; that all areas of the

property are owned equally by the tenants; and, that upon the death of the other tenant, the surviving tenant will have an undivided 100% share of the property, to the exclusion of any other beneficiary by operation of law or otherwise.

Upon dissolution of their marriage, the parties understand and agree that during their lifetime they will not give, grant, sell, rent, apportion, mortgage, or encumber their rights in and to 3100 Apple Hill Road, Louisville, Jefferson County, Kentucky 40245, without first obtaining the express written consent of the other.

The parties agree that *the Husband/Respondent shall continue to have the use and enjoyment of the farm property, equipment, and tools to raise crops, for at least the next two (2) years, after which the property will be listed for sale.* The parties agree that each shall be responsible for and pay 50% of the property taxes and insurance for this property for 2020, 2021 and for all succeeding years as joint owners. The parties shall each retain ownership in the farm equipment and tools, with a combined fair market value of \$9,650.00, until such time as the farm, equipment and tools are sold. Upon the sale of any piece of farm equipment or tool, the net proceeds shall be equally divided between the parties, 50/50.

Upon the sale of the farm property the net proceeds shall be equally divided between the parties, 50/50.

(Emphasis added.)

According to Mary's affidavit, the parties' son moved out of the residence located on the Farm in January 2024. At that time, Mary attempted to have Fred either purchase her interest in the property or agree to list it for sale. Fred offered Mary \$125,000 for her interest. Mary declined the offer, noting that

the Farm had been appraised for substantially more than twice that sum in 2020.

Fred thereafter declined to negotiate further or agree to list the property.

On March 25, 2025, Mary filed a motion asking the family court to order the Farm listed for sale. The following month, she moved for summary judgment, asserting that the PSA unambiguously required the Farm to be listed for sale after two years. Fred opposed the motion claiming that so long as he was still raising crops on the Farm, Mary could not force him to list it. The family court denied Mary's motion for summary judgment, and the matter subsequently came before it for further consideration. After questioning counsel concerning the issue presented and determining that the matter required interpretation of the PSA, the family court took the matter under submission.

On September 3, 2025, the family court denied Mary's motion to list the Farm for sale. After setting forth the parties' respective interpretations, the family court reasoned:

5. While the parties agree that the language quoted above is the language of the Property Settlement Agreement, their interpretations of the same lead to vastly differing results.

6. This Court believes that the plain language of the Property Settlement Agreement allows for a minimum time period of two (2) years, but that Respondent, Fred Holden, would continue to have use of the property as long as he was farming the same.

7. As such, the Petitioner's Motion to List the Property for Sale is HEREBY DENIED.

The family court subsequently denied Mary's motion to alter, amend, or vacate its order. This appeal followed.

II. ANALYSIS

The terms of a property settlement agreement incorporated into a decree of dissolution are enforceable as contract terms. *Money v. Money*, 297 S.W.3d 69, 71 (Ky. App. 2009) (citing KRS¹ 403.180(5)). "[T]he interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to de novo review." *3D Enters. Contracting Corp. v. Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 174 S.W.3d 440, 448 (Ky. 2005) (quoting *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002)). We therefore afford no deference to the family court's interpretation of the PSA.

Our first task is to determine whether the disputed provision is ambiguous because that determination dictates how we proceed in construing it. *Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 105-06 (Ky. 2003). "A contract is ambiguous if a reasonable person would find it susceptible to different or

¹ Kentucky Revised Statutes.

inconsistent interpretations.” *Cantrell Supply*, 94 S.W.3d at 385; *see also Jackson Hosp. Corp. v. United Clinics of Ky., LLC*, 545 S.W.3d 327, 332 (Ky. App. 2018).

If the language is unambiguous, our inquiry is confined to the agreement itself.

“‘[I]n the absence of ambiguity, a written instrument will be enforced strictly according to its terms,’” with its language assigned its ordinary meaning and without resort to extrinsic evidence. *Kentucky Shakespeare Festival, Inc. v. Dunaway*, 490 S.W.3d 691, 694 (Ky. 2016) (quoting *Wehr Constructors, Inc. v. Assurance Co. of Am.*, 384 S.W.3d 680, 687 (Ky. 2012)).

If, however, the agreement is ambiguous, the inquiry changes. A court may then consider “parol and extrinsic evidence involving the circumstances surrounding execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties.” *Cantrell Supply*, 94 S.W.3d at 385; *see also Frear*, 103 S.W.3d at 106. Once ambiguity is established, disputes concerning such extrinsic evidence present factual questions for the factfinder. *Cantrell Supply*, 94 S.W.3d at 385.

Mary and Fred each maintain that the disputed provision is unambiguous, but they reach markedly different conclusions as to its meaning. Mary focuses principally on the phrase “after which the property will be listed for sale.” She maintains that the PSA guaranteed Fred the use and enjoyment of the Farm for a minimum period of two years, after which the Farm was required to be

listed for sale. Under Mary's interpretation, the words "at least" do not render the obligation to list the Farm indefinite. Rather, they guaranteed Fred a minimum period during which he could continue farming the property before it was listed for sale and then allowed him to continue using the farm to raise crops during the list period.

Fred reads the same language differently. He emphasizes the parties' use of the words "at least," arguing that those words establish two years as floor rather than a ceiling for his use and enjoyment of the Farm. He also relies upon the surrounding provisions of the PSA, which contemplate the parties' continued joint ownership of the Farm, prohibit either party from disposing of an interest in it without the other's written consent, and require them to share property taxes and insurance for 2020, 2021, "and for all succeeding years as joint owners." From these provisions, Fred maintains that the PSA permits him to continue farming the property beyond the initial two-year period and does not require its sale so long as he continues to do so.

The family court adopted Fred's interpretation. Although it acknowledged that the parties' interpretations "lead to vastly differing results," it concluded that the "plain language" of the PSA provided Fred with a minimum two-year period of use and permitted him to continue using the Farm "as long as he was farming the same."

We agree with the family court that the words “at least” prevent the two-year period from being understood simply as a fixed two-year term. But that observation does not resolve the interpretive question before us. Mary’s construction gives substantial effect to the language immediately following the two-year period, particularly the parties’ agreement that “after which the property will be listed for sale.” Under her interpretation, the expiration of two years did not necessarily terminate Fred’s use and enjoyment of the Farm; rather, it triggered the obligation to **list** the Farm for sale. Fred could continue farming the property while it was being marketed and until a sale occurred. The parties could not have known when they executed the PSA how long that process might take, particularly given the nature and value of the Farm. Thus, Mary’s interpretation gives meaning to both portions of the sentence: Fred was guaranteed the use and enjoyment of the Farm for **at least** two years, but after two years the Farm was required to be listed for sale. Nothing in the PSA expressly provides that Fred’s continued farming after that point would postpone the obligation to list the Farm.

Fred reads the provision differently. He focuses on the entire phrase granting him “the use and enjoyment of the farm property, equipment, and tools to raise crops, for at least the next two (2) years.” In his view, “at least” establishes two years as merely the minimum duration of his right to use the Farm for the stated purpose of raising crops. Thus, he maintains that his right of use did not

terminate after two years but continued so long as he continued farming the property. Fred also relies upon the surrounding provisions of the PSA, which contemplate the parties' continued joint ownership of the Farm, prohibit either party from disposing of an interest in it without the other's written consent, and require them to share property taxes and insurance for 2020, 2021, "and for all succeeding years as joint owners." Read together, Fred contends these provisions demonstrate that the parties contemplated his continued agricultural use of the Farm beyond the initial two-year period and did not require the Farm to be listed merely because two years had elapsed.

Ultimately, neither construction is outside the realm of reason. Mary's interpretation gives effect to both the guaranteed minimum period of Fred's use and the subsequent direction that the Farm "will be listed for sale." Under her construction, Fred's right to raise crops could continue beyond two years while the Farm was listed and awaiting sale. Fred's interpretation, in turn, gives particular significance to the entire phrase granting him use and enjoyment of the Farm "to raise crops, for at least the next two (2) years," as well as the provisions contemplating the parties' continued joint ownership of the Farm. Read in that manner, the PSA reasonably contemplates Fred continuing to farm the property beyond the initial two-year period.

The ambiguity arises from how that continuing right of use operates in conjunction with the language immediately following it: “after which the property will be listed for sale.” The PSA does not specify whether Fred’s continued farming beyond two years postpones the obligation to list the Farm or whether the Farm must be listed after two years while Fred continues farming it pending a sale. Both interpretations find support in the language the parties chose, and neither is compelled by the PSA as a whole. Because the disputed provision is reasonably susceptible to both interpretations, we conclude that it is ambiguous. *See Cantrell Supply*, 94 S.W.3d at 385.

Our conclusion finds additional support in two unpublished decisions of this Court, which, although not binding, we find persuasive.² In *Partin v. Partin*, No. 2015-CA-001256-ME, 2016 WL 4255013, at *2-3 (Ky. App. Aug. 12, 2016), the Court considered competing interpretations of a provision in a marital settlement agreement. In concluding that the provision was ambiguous, the Court explained that “[w]hat is key is that both interpretations are reasonable[.]” *Id.* at *2. That observation is particularly apt here.

Even more analogous is *Davis v. Davis*, Nos. 2019-CA-000350-MR, 2019-CA-000357-MR, 2020 WL 4556053, at *4 (Ky. App. Aug. 7, 2020). There,

² We are cognizant that unpublished opinions are not binding precedent. Kentucky Rules of Appellate Procedure (“RAP”) 41(A).

this Court considered an agreement between the parties providing that the father would continue paying his son's college expenses "for at least 2 more years." *Id.* The parties disagreed as to whether the agreement required the father to continue funding the son's educational expenses beyond the two-year period if the son remained enrolled in college. The Court concluded that the provision was ambiguous, reasoning that the phrase "may reasonably be interpreted to mean two years or possibly more than two years." *Id.* The similarity between that language and the PSA's grant of Fred's use and enjoyment of the Farm "for at least the next two (2) years" lends further support to our conclusion that the provision before us is reasonably susceptible to more than one interpretation.

Our determination that the PSA is ambiguous does not resolve which interpretation carries the day. Rather, it means that the parties' intent cannot be determined from the PSA alone. When contractual language is ambiguous, the court may consider extrinsic evidence concerning the circumstances surrounding execution of the agreement, its subject matter, the objects the parties sought to accomplish, and their conduct. *Cantrell Supply*, 94 S.W.3d at 385; *Frear*, 103 S.W.3d at 106. Any disputes concerning that evidence present factual questions for the factfinder. *Cantrell Supply*, 94 S.W.3d at 385.

Because the family court determined that the PSA was unambiguous, it did not proceed to this factual inquiry. We will not undertake that inquiry for the

first time on appeal. On remand, the family court may conduct such additional proceedings as it deems necessary and receive evidence bearing upon the parties' intent, including the circumstances surrounding execution of the PSA, the purposes the parties sought to accomplish, and their conduct following its execution. After considering the relevant evidence and making any necessary factual findings, the family court must determine how the parties intended Fred's right to continue using the Farm to raise crops beyond the initial two-year period to operate in relation to their agreement that, "after" that period, the Farm "will be listed for sale."

III. CONCLUSION

Accordingly, we vacate the September 3, 2025, order and remand this matter to the Jefferson Family Court for further proceedings consistent with this Opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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