

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-325

APRIL TERM, 2008

Tawnya Manosh	}	APPEALED FROM:
	}	
v.	}	Lamoille Family Court
	}	
Howard Steven Manosh	}	DOCKET NO. 132-7-03 Ledm

Trial Judge: Dennis R. Pearson

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

Wife appeals from the family court’s denial of her motion to enforce and clarify a final divorce order. We affirm.

The parties divorced in January 2007, and the family court’s final divorce order incorporated the parties’ stipulation regarding the distribution of their marital assets. The stipulation provided in relevant part that husband would “transfer 2.5% of his stock in H.A. Manosh to [wife] forthwith so that [wife] will have sole title to said 2.5% and her existing interest, free and clear of his marital interest therein.” An exhibit incorporated into the stipulation by reference similarly stated that husband was to retain “[h]is present interest in H.A. Manosh, Inc., less 2.5%.” Husband’s stock was subject to a right of first refusal, which was exercised, and husband therefore tendered payment to wife for the value of 2.5% of his 1174 shares in the company. Wife refused payment, asserting that she was entitled to 2.5% of all shares in the entire company, not just 2.5% of husband’s shares.

In May 2007, wife filed a “motion to enforce and clarify if necessary,” reiterating her position that she was entitled to 2.5% of all shares in the company. The court denied her motion, explaining first that because the nisi period had run, it no longer had authority to modify the parties’ property distribution. The court also found that the agreement plainly referred only to husband’s own stock, and thus there was nothing to “clarify.” Finally, the court noted that it would have had no authority to order husband to transfer stock owned by others as part of the final divorce order. Wife filed a motion for reconsideration, which the court denied, reiterating its conclusion that the parties’ agreement was unambiguous. The court also indicated that it lacked authority to revisit the fairness of the parties’ agreement because wife had not challenged the fairness of the agreement prior to entry of the final divorce order. Wife appealed.

Wife argues that the trial court erred in denying her motion. According to wife, the parties’ stipulation is ambiguous because the stock transfer is described both as 2.5% of husband’s stock, and 2.5% of husband’s “present interest” in the company. Wife maintains that the court should have held an evidentiary hearing to consider extrinsic evidence and it should have evaluated if the parties ever had a true “meeting of the minds.” Wife suggests that if this Court finds the parties’ agreement

unambiguous, she is entitled to reformation of the agreement because neither party intended that husband would give her only 2.5% of his shares. Finally, wife asserts that the court incorrectly treated her motion as a motion to modify, and that it incorrectly found that she was challenging the fairness of the parties' agreement.

We find no basis to disturb the court's decision. As an initial matter, the court did not err in its characterization of wife's motion. To the extent that wife sought to change the plain terms of the parties' agreement, her motion could be validly construed as a motion to modify the original order. It was also reasonable to conclude that wife was challenging the fairness of husband's interpretation of the parties' agreement. More importantly, however, the family court rejected wife's motion on numerous other grounds, and thus, any error is harmless. We agree with the family court that the parties' stipulation is plain and unambiguous, and thus, there was nothing to "clarify," and wife was not entitled to enforce her interpretation of the order.

As recited above, the parties agreed that husband would transfer 2.5 % of "his stock" to wife. There is no conflict between this provision and the provision stating that husband would retain "[h]is present interest in H.A. Manosh, Inc., less 2.5%." Husband's "present interest" in the company is the amount of stock he holds, and he provided wife with payment for 2.5% of these shares as agreed. Because the terms of the agreement are plain, the agreement must be enforced as written. KPC Corp. v. Book Press, Inc., 161 Vt. 145, 150 (1993). Under these circumstances, no evidentiary hearing was required. There was no "obvious conflict" in the terms of the agreement, as wife argues, and no "ambiguity" to resolve. Indeed, wife's interpretation would rewrite the terms of the parties' agreement. See Kipp v. Estate of Chips, 169 Vt. 102, 107 (1999) (extrinsic evidence "may not be used to vary the terms of an unambiguous writing"). We note, moreover, that whether ambiguity exists, and the court's interpretation of an unambiguous contract, are questions of law, not fact. John A. Russell Corp. v. Bohlig, 170 Vt. 12, 16 (1999). Finally, to the extent that wife challenges the validity of the agreement itself, or seeks rescission or reformation of the contract, her remedy is to file a motion under V.R.C.P. 60(b), not a motion to enforce and "clarify." See Pouech v. Pouech, 2006 VT 40, ¶ 20, 180 Vt. 1 ("Once a stipulation is incorporated into a final order, concerns regarding finality require that the stipulation be susceptible to attack only on grounds sufficient to overturn a judgment."). We find no error in the family court's decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice