Andrea v. Andrea

Appeals Court of Massachusetts

December 3, 2020, Entered

19-P-1526

Reporter
2020 Mass. App. Unpub. LEXIS 1010 *; 99 Mass. App. Ct. 1101; 159 N.E.3d 1068; 2020 WL 7062505

KELLY ANDREA *vs.* RALPH ANDREA.

Notice: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace* v. *Curran*, 71 Mass. App. Ct. 258, 260 n.4, 881 N.E.2d 792 (2008).

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Judges: Wolohojian, Neyman & Lemire, JJ. [*1]

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff (wife) appeals from a summary judgment entered in favor of the defendant (husband) on his complaint for modification, which sought, in effect, a declaration that, upon his remarriage, he had no further obligation under a

surviving separation agreement to provide health, vision, and dental insurance for the wife.[1] We vacate and remand for further proceedings.

Motions for summary judgment are reviewed "de novo to determine whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law." *Galenski* v. *Erving*, 471 Mass. 305, 307, 28 N.E.3d 470 (2015). The interpretation of an unambiguous contract is a question of law subject to de novo review, as is the question whether a separation agreement is ambiguous. See *Lalchandani* v. *Roddy*, 86 Mass. App. Ct. 819, 823, 22 N.E.3d 166 (2015). Thus, in this case, we interpret de novo the terms of the parties' separation agreement relating to medical insurance.

Those provisions, titled "Medical Expenses," were contained in Exhibit E of the separation agreement, which provided in pertinent part[2] as follows:

> "1) *Medical Insurance*: The Husband shall maintain health, vision (as presently provided) [*2] and dental insurance for the benefit of the Wife . . .
>
> "2) *Uninsured Medical Expenses*: The Parties shall each be responsible for their own uninsured medical expenses.
>
> . . .
>
> "The Wife shall have all benefits for continuation of medical coverage as is allowed under G. L. c. 175, § 110l[,] and other similar statutes."[3]

The central question in this case is the relationship between section 1 and the last paragraph of section 2.

The wife argues that the last paragraph of section 2 does not alter or limit the husband's continuing obligation to provide medical insurance contained in section 1 or, in the alternative, that the contract is ambiguous, and that the judge should therefore have considered the wife's intent that the husband provide medical insurance for her indefinitely at no cost to her. The husband argues, on the other hand, that the last paragraph of section 2 unambiguously restricts section 1 with the effect of terminating his obligation to provide medical insurance to the wife upon his remarriage. Alternatively, the husband argues that any rights the wife has under G. L. c. 175, § 110l, were lost because no reference was made to them in the divorce decree. Further, the husband argues that if the wife retains rights to

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[1] Although the husband brought a modification complaint, in fact he was seeking a declaration that the separation agreement did not require him to continue to provide medical insurance after his remarriage. For this reason, it would have been clearer had he filed a complaint for declaratory judgment.

[2] We exclude those provisions relating to the children as they have no bearing on the issues before us.

[3] Neither party disputes that the reference to c. 176 is a typographical error which should instead read c. 175.

continuation coverage under G. L. c. 175, § 110I, the correct remedy is by way [*3] of rider on his insurance policy.

The husband's interpretation of the language of the agreement does not persuade us. To begin with, we note that the continuation provision is not part of section 1, nor does it refer back to section 1 — let alone with any limiting language. Importantly, the continuation provision is written expansively, referring to "all" benefits for continuation, and to a broad category of unspecified statutory provisions; none of the language suggests that it was designed to limit the wife's medical coverage. Likewise, the clear purpose of G. L. c. 175, § 110I[4] (to which the continuation provision refers), is to extend — rather than restrict — the medical insurance options available to spouses after a divorce and to benefit the spouse whose medical insurance is being provided for by the spouse from whom he or she is separated. Further, use of the word "shall" indicates that the wife's entitlement to any such continuation coverage is mandatory. See *Rea* v. *Cook*, 217 Mass. 427, 430, 105 N.E. 618 (1914) ("'Shall,' although not a word of inflexible signification, in its popular and common meaning is imperative and mandatory"). In addition, whereas section 1 refers to maintaining the then-existing medical coverage for the wife, the final paragraph of section 2 refers to something [*4] different; namely, her entitlement to continuation coverage, including in the event of his remarriage.

All that said, we are equally unpersuaded by the wife's argument that the final paragraph of section 2 has no meaning or effect, and that her entitlement under section 1 continues regardless of the final paragraph of section 2 referring to continuation coverage. Exhibit E, like all contractual language, is to be read as a whole in a manner that gives meaning to each of its provisions. See *Kingstown Corp.* v. *Black Cat Cranberry Corp.*, 65 Mass. App. Ct. 154, 158, 839 N.E.2d 333 (2005), quoting *Worcester Mut. Ins. Co.* v. *Marnell*, 398 Mass. 240, 245, 496 N.E.2d 158 (1986) ("a reading of a contract 'which gives a reasonable meaning to all [its] provisions . . . is . . . preferred to one which leaves a part useless or inexplicable'"). In addition to this general principle of interpretation, as we noted above, section 1 and the last paragraph of section 2 are directed to different things. Section 1 is directed to maintenance of the medical coverage existing at the time of the divorce; section 2 is directed to the wife's entitlement to continuation of coverage under the provisions of G. L. c. 175, § 110I, and related statutes.

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[4] "In the event of the remarriage of the group plan member . . . , the former spouse thereafter shall have the right, if so provided in said judgment, to continue to receive benefits as are available to the member, by means of the addition of a rider to the family plan or the issuance of an individual plan, either of which may be at additional premium rates . . ." G. L. c. 175, § 110I (*b*).

For these reasons, we conclude (as did the motion judge) that the wife's entitlement to medical insurance after the husband's remarriage is subject to the provisions of G. L. c. 175, § 110I.

What remains is the husband's argument that G. L. c. 175, § 110I ([*5] *b*), allows a spouse to have continuation coverage only "*if so provided in said [divorce] judgment*." It is true, as the husband points out, that the wife's continuation rights were not individually referenced in the divorce judgment. However, the judgment of divorce nisi incorporated by reference *all* of the provisions of the settlement agreement, including the one at issue here, which stated that the wife "shall have all benefits for continuation of medical coverage as is allowed under G. L. c. 17[5], § 110I." Given that the divorce judgment contained a blanket statement incorporating the separation agreement's terms in toto, we see no reason why a specific reference to any individual term of the agreement was additionally necessary. To conclude otherwise would negate the mandatory nature of the language of the continuation provision.

We conclude, therefore, that the wife is entitled under the agreement to the continuation of medical coverage upon the husband's remarriage, in accordance with the provisions of G. L. c. 175, § 110I (*b*). Two additional issues, however, remain to be determined on remand. First, although the husband argues that the correct relief is for the wife to be added to a rider on the husband's plan, the [*6] statute provides that coverage may be either by addition of a rider to a family plan or the issuance of an individual plan. On remand, the judge should determine which of these two options is appropriate. Second, because the agreement's silence on the matter creates an ambiguity as to who should bear the cost of continuation coverage or how it should be allocated among them, see *McManus* v. *McManus*, 87 Mass. App. Ct. 864, 868-869, 35 N.E.3d 745 (2015), this too must be determined on remand, keeping in mind that the clear purpose of G. L. c. 175, § 110I, is to benefit the spouse whose medical insurance is being provided for by the spouse from whom he or she is divorced.

The husband's request for appellate fees is denied.

So ordered.

By the Court (Wolohojian, Neyman & Lemire, JJ.[5]),

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[5] The panelists are listed in order of seniority.

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