

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ROBYN M. STAYTON,	:	APPEAL NO. C-070280
	:	TRIAL NO. DR-0102034
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JAMES H. STAYTON,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Pursuant to their 2000 divorce, the parties in this case entered into a separation agreement and a shared-parenting plan, both of which were incorporated into the decree. As part of the shared-parenting plan, defendant-appellee James H. Stayton agreed to be responsible for “all of the children’s extracurricular expenses, school fees, uniforms, lessons, sports fees, outfits, uniforms, musical instruments, summer camp, sporting equipment, etc.”

In 2005, plaintiff-appellant Robyn M. Stayton² filed a motion to terminate the shared-parenting plan. After a series of negotiations, the parties reached an agreement that was memorialized in an agreed entry titled “Agreed Entry Re: Designation of Residential Parent.” The agreement named Robyn as the residential parent of three of the children and named James as the residential parent of the parties’ oldest child. The

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² We refer to the parties by their first names from this point forward, as the parties share the same surname.

agreement set a future date for reevaluating the shared-parenting time and “abrogate[d] the Shared Parenting Agreement as of the date of the filing of said Entry.”

During the follow-up hearing, counsel for Robyn—who had been retained during the negotiations—attempted to present evidence that James had failed to pay for the children’s extracurricular expenses as required under the shared-parenting plan. The claim was based solely on those expenses that had accrued prior to the date of the agreed entry. Counsel was under the impression that her predecessor had filed a motion for contempt on that issue concurrently with the motion to terminate the shared-parenting plan. When counsel for James indicated that no such motion had been filed, the evidence was not presented.

Counsel for Robyn filed a motion for contempt later that day. The matter was heard before a magistrate, and both parties submitted written closing arguments. In his argument, James claimed that some of the expenses had been paid and that he was not obligated to pay the remainder because he had not received timely notice of the expenses. At no point did he argue that the accrued obligation had been compromised and settled by the agreed entry.

The magistrate determined that the agreed entry abrogating the shared-parenting plan prevented a contempt finding. The magistrate reasoned that “[a]lthough it may be that the parties did not intend to abrogate the entire shared parenting plan, the Court speaks through its entries and the language of the agreed entry is clear.”

The trial court overruled Robyn’s objections, agreeing with the magistrate and additionally finding that Robyn’s claim was barred by *res judicata*. The basis of that decision was the failure of Robyn to object to a subsequent magistrate’s decision that

had said that the “[t]he entry [of July 17, 2006] also *terminated* the parties previously [sic] shared parenting plan.”

In three assignments of error, Robyn now argues that the trial court incorrectly dismissed her motion for contempt. As the second assignment of error is dispositive, we address that assignment first.

In her second assignment of error, Robyn argues that the trial court incorrectly broadened the language of the agreed entry, resulting in a waiver of the amounts due prior to the date of the entry. We must agree.

Agreements resolving issues incident to divorce are contracts subject to the same rules of construction applicable to other contracts.³ “When construing a contract, a court’s principle objective is to ascertain and give effect to the intent of the parties.”⁴ Usually, that intent resides in the language of the agreement.⁵ But when the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning, extrinsic evidence may be considered to give effect to the parties’ intentions.⁶ Such extrinsic evidence may include the following: (1) the circumstances surrounding the parties at the time the contract was made; (2) the objectives the parties intended to accomplish by entering into the contract; and (3) any acts by the parties that demonstrate the construction they gave to their agreement.⁷

³ *Reik v. Bowden*, 172 Ohio App.3d 12, 2007-Ohio-2533, 872 N.E.2d 1253, ¶12, appeal not allowed 116 Ohio St.3d 1410, 2007-Ohio-6140, 876 N.E.2d 968.

⁴ *City Life Dev., Inc. v. Praxus Group*, 8th Dist. No. 88221, 2007-Ohio-2114, ¶28, citing *Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 1999-Ohio-162, 714 N.E.2d 898.

⁵ *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 509 N.E.2d 411, paragraph one of the syllabus.

⁶ *Id.* at ¶32, citing *Shifrin v. Forest Enterprises, Inc.*, 64 Ohio St.3d 635, 638, 1992-Ohio-28, 597 N.E.2d 499.

⁷ *Id.*, citing *Blosser v. Carter* (1990), 67 Ohio App.3d 215, 219, 586 N.E.2d 253.

Black's Law Dictionary defines "abrogate" as "to abolish (a law or custom) by formal or authoritative action; to annul or repeal."⁸ It defines "abolish" as "to annul, eliminate, or destroy, esp. an ongoing practice or thing."⁹

Nothing about the words "abrogate" or "abolish" suggest that Robyn had waived her right to seek reimbursement for expenses incurred prior to signing the agreed entry. In the context of this case, and in the limited context of payment of expenses that had accrued prior to the agreed entry, the use of the word "abrogate" was ambiguous. The agreed entry addressed only custody issues and was even captioned "Agreed Entry Re: Designation of Residential Parent." Additionally, even if the agreement terminated all aspects of the shared-parenting plan, an issue we need not decide, the inclusion of the language "as of the date of this entry" created an ambiguity as to whether the parties intended to relieve James from his obligations that had accrued up to that point.

This ambiguity should have been resolved by considering the extrinsic evidence. In his written argument in opposition to the motion for contempt, James never claimed that the obligations had been settled by the agreed entry. In fact, part of his defense was that he had paid part of the amounts in dispute. In addition, James attached a copy of a check, dated six months after the agreed entry, as evidence of payment of another part of the obligations. This was a clear indication that, well after the agreed entry was filed, James did not believe that the obligation at issue had been compromised and settled. The record is clear that neither party intended this result.

While we agree with the trial court that Robyn's failure to object to a subsequent decision could have raised a res judicata issue, it did not do so in this case. The entry referred to by the trial court stated that "[t]he entry [of July 17, 2006] also *terminated*

⁸ Black's Law Dictionary (8 Ed.2004) 7.

⁹ Id. at 5.

the parties previously [sic] shared parenting plan.” But there is nothing in the language—or in the use of the word “terminated” in that subsequent entry—that would have put Robyn on notice that the magistrate had resolved the issue of the unreimbursed expenses that had accrued prior to the termination of the shared-parenting plan. Therefore, the failure to object to that decision had no res judicata effect on Robyn’s ability to seek payment for expenses that were due prior to the date of the agreed entry.

For these reasons, we hold that the trial court incorrectly concluded that James was no longer required to reimburse Robyn for the expenses that had accrued prior to the date of the July 17, 2006, agreed entry. Robyn’s second assignment of error has merit and is sustained. This determination renders the two remaining assignments of error moot.

The judgment of the trial court is reversed, and this case is remanded to the trial court for consideration of the merits of Robyn’s motion for contempt.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on February 13, 2008
per order of the Court _____
Presiding Judge