IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 19, 2014 Session

OK NAN KIM LAMBERT
v.
MARK STEPHEN LAMBERT

Appeal from the Montgomery County Chancery Court
No. MC-CH-CV-DI-03-0000563 Laurence M. McMillan, Jr., Judge

No. M2013-01885-COA-R3-CV - Filed July 18, 2014

This appeal involves the interpretation of two marital dissolution agreements. The parties married, divorced , and then remarried each other. They stayed remarried for a few years and then divorced again. In both divorces, the parties entered into a marital dissolution agreement. Years later, after the husband retired from military service, this litigation was commenced regarding the award of a portion of the husband's military retirement benefits to the wife. The trial court held that the wife's award of benefits was based on the combined duration of both marriages. Both parties appeal. The husband argues that the trial court erred in not limiting the wife's award to the duration of the first marriage only. We construe the parties' marital dissolution agreement as awarding the wife the agreed percentage of all of the husband's military retirement benefits, irrespective of the duration of marriage. Thus, we decline to adopt the husband's argument. The wife does not argue on appeal that the trial court erred in failing to award her the agreed percentage of all of the husband's military retirement benefits. Accordingly, we are constrained to affirm the trial court's decision to base the award on the combined duration of both of the parties' marriages.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed.

HOLLY M. KIRBY, J., delivered the Opinion of the Court, in which DAVID R. FARMER, J., and J. STEVEN STAFFORD, J., joined.

Christopher J. Pittman, Clarksville, Tennessee, for Defendant/Appellant Mark Stephen Lambert

Steven T. Atkins, Clarksville, Tennessee, for Plaintiff/Appellee Ok Nan Kim Lambert

OPINION

FACTS AND PROCEDURAL HISTORY

The facts in this case are generally undisputed. Defendant/Appellant Mark Stephen Lambert ("Husband") and Plaintiff/Appellee Ok Nan Kim Lambert ("Wife") were married for 16 years. No children were born of the marriage. During their marriage, Husband served in the United States Army and accrued military retirement benefits.

Wife filed a complaint for divorce. Husband was not represented by counsel in the ensuing divorce proceedings. In December 1999, the trial court granted the parties a divorce based on irreconcilable differences. The divorce decree incorporated the parties' marital dissolution agreement ("first MDA"). At the time of the divorce, Husband was still in active service in the Army and was not yet eligible to receive his retirement pay. The first MDA addressed the distribution of Husband's military retirement benefits upon his eventual retirement:

> As a division of a portion of the parties' marital property, [Wife] shall have, and she hereby has, a fifty percent (50%) share of [Husband's] military retired pay. The sharing of said retired pay shall commence when [Husband] becomes eligible to receive said retired pay and shall continue until the death of either party. The appropriate governmental paying authority shall directly pay to [Wife] her share of [Husband's] monthly United States Army retired pay. Until said direct payments are effected, [Husband] shall pay to [Wife] her monthly share of said retired pay on the first day of each month . . . .

Thus, the divorce decree, incorporating the first MDA, provided that Wife would receive 50% of Husband's military retirement pay upon his retirement. It awarded Wife alimony of $5000 per month while Husband was stationed overseas, to be reduced to $2500 per month until June 1, 2004, and then reduced again to $2000 per month. This divorce decree stated that the alimony award was terminable upon Wife's death or remarriage, but it also said that the alimony award "shall not be reduced for any reason whatsoever." Neither party appealed the first divorce decree and it became final.

About a year later, in December 2000, the parties remarried each other. During their second marriage, Husband continued to serve in the Army. Wife, meanwhile, managed several rental properties.

After the parties had been remarried for about three years, Wife filed for divorce again. At the time, Husband was still in active service in the military and not yet eligible to receive his military retirement benefits. Again Husband chose not to retain counsel in the divorce

proceedings.

In June 2004, the trial court granted the parties their second divorce on grounds of irreconcilable differences. The second divorce decree incorporated a second marital dissolution agreement ("second MDA"). The second MDA also addressed the distribution of Husband's military retirement benefits when he became eligible to receive them:

> Petitioner's Property: As a division of marital property, [Wife] was awarded certain property interests, to include, but not limited to, fifty percent (50%) of the respondent's military retired pay, in accordance with the law of the state by the final decree of divorce entered December 10, 1999, in *Ok Nan Kim Lambert vs. Mark Stephen Lambert*, File No. 99-060050, Chancery Court for the Nineteenth Judicial District, Montgomery County, Tennessee, at Clarksville. In accordance with the law of this state, the property interest awarded to [Wife] by the final decree of December 10, 1999, to include, but not limited to her said fifty percent (50%) share of [Husband's] pay, is, and will continue to be after the entry of this decree, the sole and separate property of [Wife].

Thus, the second MDA referenced the fact that the first MDA awarded Wife 50% of Husband's military retirement pay. For alimony, the second MDA awarded Wife alimony of $3000 per month for the first 6 months, and then $2000 per month for 108 months. The second MDA provided that the alimony would continue until the payments were completed, Husband died, or Wife remarried, whichever occurred first. Like the first MDA, the second MDA also said that the alimony was not to be reduced for any reason whatsoever.

After the second divorce decree was entered in June 2004, the parties agreed to a modification of the second MDA, adding a paragraph to the agreement. The trial court approved the modification. The modification added the following paragraph:

> Section 18: At the request of [Wife], [Husband] shall execute, acknowledge and deliver to [Wife] any and all further instruments that may be reasonably required to give full force and effect to provisions of this agreement . . . to obtain such benefits and privileges to which she may be entitled as a result of being married to a service member for twenty (20) years during which time the service member performed twenty (20) years credible service in the United States Army. The parties stipulate that the overlap of the parties' marriage and the [Husband's] credible active duty service in the Untied States Army is in excess of twenty (20) years.

Thus, the added paragraph addressed the documentation Husband would deliver to Wife with respect to the military retirement benefits. As with the first divorce decree, neither party appealed the second divorce decree or the modification and both became final. Husband continued his active military service.

Several years later, in 2008, Husband retired from the Army after approximately 27 years of continuous service. Upon retirement, Husband was informed that, because of the imprecise language in the two divorce decrees, the Defense Finance and Accounting Service ("DFAS") could not process Wife's request for her portion of Husband's military retirement benefits.

When Husband learned that DFAS could not process Wife's request on his retirement benefits, he hired an attorney. As a result, in February 2009, Husband procured a qualified domestic relations order ("QDRO"). Despite the QDRO, confusion over the language in the retirement provisions of the divorce decrees still left DFAS unable to process Wife's request for her portion of Husband's retirement benefits.[1]

As a result, in November 2010, Wife filed a petition for contempt against Husband in the Chancery Court of Montgomery County, Tennessee. Husband's response informed the trial court that he was self-represented during both divorces and that both final divorce decrees were prepared by Wife's counsel. The decrees that Wife's counsel prepared, Husband stated, "do[] not specify the years of service for which the fifty percent (50%) portion of retirement must be allocated and without such information, the retirement request could not be processed by DFAS." Husband contended that, because Wife was responsible for submitting the appropriate paperwork to DFAS, he should not be held in contempt for failure to pay the retirement benefits.

Husband's response to Wife's contempt petition included a petition to reduce his alimony obligation. Husband claimed that there was a material change in circumstances but did not say what the change was.

For reasons that are not entirely clear in the record, the trial court decided to appoint a special master "to calculate the amount of military retirement owed by [H]usband to [W]ife. . . ."[2] It authorized the Special Master to conduct an evidentiary hearing and require the production of documents and other evidence. The trial court delayed ruling on Husband's petition to reduce his alimony obligation until after the Special Master issued his report on the

[1] From the record, it appears that a QDRO was unnecessary in this case for the division of Husband's military retirement benefits.

[2] Matters appropriate for the appointment of a special master are addressed *infra*.

calculation of military pay.

In May 2013, the Special Master filed a lengthy report. The Special Master posed the issue before him as "what is the correct phrasing (and the amount or proper calculation) in order for [DFAS] to deduct from [Husband's] retirement pay [Wife's] property interest." The bulk of the report recited the parties' arguments on the proper interpretation of the MDAs. It then discussed the usual practice in military divorces and the equities of each party's proposed interpretation of the MDAs:

> The standard practice in these matters is that the spouse's interest in the military member's retirement is based on the time that the parties were married while the service member was on active military service. . . . [T]he standard retirement referred to in military service is the twenty year when a soldier becomes eligible for retirement. The first decree states the wife shall receive 50% of the husband's retired pay. Though unstated, the Special Master believes the intent is based on a twenty year service. The wife would essentially get a better deal than is typical since she was only married to the service member for 15 years while a member of the military. . . . But the Special Master will . . . not go beyond twenty years without specific language to do so (of which there is none). . . .[T]he Special Master finds that the fifty percent (50%) of retirement pay due to [Wife] is based on the time frame the parties were actually married to one another. . . .[T]o do otherwise would fly in the face of equity.

Thus, the Special Master reasoned that considerations of equity and the "standard practice" in military divorces compelled an interpretation of the parties' MDAs that gave Wife 50% of Husband's retirement pay based on the total number of years the parties were actually married. The report concluded:

> The Special Master finds that [Wife's] property interest in [Husband's] retirement is 50% of [Husband's] retired pay based on a twenty year marriage. Accordingly, . . . [Wife] is awarded a percentage of [Husband's] disposable military retired pay, to be computed by multiplying 50% times a fraction, the numerator which is 240 months of marriage during [Husband's] creditable military service, divided by [Husband's] total number of months of creditable military service.

Husband filed a timely objection to the Special Master's report. He argued that the Special Master erred in his interpretation of the language in the second divorce decree and that Wife should bear the consequences of her failure to take proper steps to obtain her portion of

retirement through DFAS. Husband also contended that the alimony award was unconscionable because the trial court considered the duration of both marriages instead of considering only the duration of the second marriage.

After a hearing, in June 2013, the trial court entered an order in which it adopted the report of the Special Master in its entirety, without elaboration. Addressing Husband's petition for reduction of his alimony obligation, the trial court held that the alimony awarded to Wife was alimony *in solido* and was therefore nonmodifiable. In the alternative, the trial court rejected Husband's argument that the alimony award was unconscionable because Husband voluntarily agreed to similar alimony provisions in both divorces. From this order, Husband now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Husband presents the following issues:

> Whether the Trial Court erred when it found that [Wife] was entitled to 50% of [Husband's] military retirement based upon a 20-year marriage.
>
> Whether the Trial Court erred when it found that the delay in retirement processing was not caused by the actions of [Wife].
>
> Whether the Trial Court erred in finding that the alimony provision set forth in the parties' second final decree of divorce was not unconscionable and was therefore enforceable.

On cross-appeal, Wife asserts that the marital dissolution agreement awards her 50% of whatever Husband's military retirement benefits are, and in the alternative contends that the trial court's decision should be affirmed on all issues.

The primary issues in this appeal involve interpretation of a marital dissolution agreement. A marital dissolution agreement is a contract between the parties. ***Hannahan v. Hannahan***, 247 S.W.3d 625, 626 (Tenn. Ct. App. 2007). "[T]he interpretation of a contract is a matter of law, [so] our review is *de novo* on the record with no presumption of correctness in the trial court's conclusions of law." ***Barnes v. Barnes***, 193 S.W.3d 495, 498 (Tenn. 2006) (citing ***Johnson v. Johnson***, 37 S.W.3d 892, 896 (Tenn. 2001); ***Honeycutt v. Honeycutt***, 152 S.W.3d 556, 561 (Tenn. Ct. App. 2003)).

ANALYSIS

At the outset, we note that the issue regarding the portion of Husband's retirement benefits to be paid to Wife was first heard by a special master, and the trial court adopted the Special Master's findings and conclusions *in toto*. Neither of the parties raise an issue regarding the trial court's appointment of a special master to resolve the retirement pay dispute, but we must address it briefly because it affects our standard of review in this appeal.

This Court has outlined the standard of review applied where the trial court has referred the matter on appeal to a special master:

> The standard of review in situations involving the findings of a special master is set forth in Tenn. Code Ann. § 27-1-113: "Where there has been a concurrent finding of the master and chancellor, which under the principles now obtaining is binding on the appellate courts, the court of appeals shall not have the right to disturb such finding."

Bradley v. Bradley, No. M2009-01234-COA-R3-CV, 2010 WL 2712533, at *6 (Tenn. Ct. App. July 8, 2010). Under this standard, concurrent findings of fact by a special master and a trial court are conclusive and cannot be overturned on appeal. ***Manis v. Manis***, 49 S.W.3d 295, 301 (Tenn. Ct. App. 2001). "This heightened standard of review applies only to findings that are made by both the [s]pecial [m]aster and the [c]hancery [c]ourt." ***In re Estate of Ladd***, 247 S.W.3d 628, 637 (Tenn. Ct. App. 2007).

Thus, "[t]he trial court's order referring certain matters to the Special Master, the Special Master's report, and the trial court's order on the report affect our standard of review on appeal." ***Bradley,*** 2010 WL 2712533, at *6 (quoting ***Pruett v. Pruett,*** No. E2007-00349-COA-R3-CV, 2008 WL 182236, at *4 (Tenn. Ct. App. Jan. 22. 2008; ***Dalton v. Dalton***, No. W2006-00118-COA-R3-CV, 2006 WL 3804415, at *3 (Tenn. Ct. App. Dec. 28, 2006)). "However, a concurrent finding is not conclusive where it is upon an issue not properly referred to a special master, where it is based upon an error of law or a mixed question of fact and law, or where it is not supported by any material evidence." ***Bradley,*** 2010 WL 2712533, at *6 (citing ***Manis,*** 49 S.W.3d at 301).

Because findings on issues not properly referred to a special master are not binding on the appellate court, we must ascertain whether the trial court properly referred to a special master the question of the proportion of Husband's retirement benefits to which Wife is entitled. Under Rule 53 of the Tennessee Rules of Civil Procedure, trial courts have broad discretion in choosing to submit a matter to a special master. Tenn. R. Civ. P. 53.01. "The trial court, however, may not refer all matters to the special master." ***Vraney v. Medical Specialty***

Clinic, P.C., 2013 WL 4806902, at *33 (Tenn. Ct. App. Sept. 9, 2013). As the ***Vraney*** Court explained:

> The main issues of a controversy and the principles on which these issues are to be adjudicated must be determined by the trial court. Collateral, subordinate, and incidental issues and the ascertainment of ancillary facts are matters properly referred to a special master.

Id. at *34 (internal citations omitted). In ***Vraney***, the appellate court concluded that the trial court did not abuse its discretion in referring the calculation of damages under the parties' contract to a special master, because the damage calculation in that case was complex. ***Id***. at *35. Under those circumstances, the matter was "a proper subject" for referral to a master. ***Id.*** at *35. The appellate court emphasized: "The trial court did not place any substantive legal issues in the Special Masters' purview." ***Id.***

In this case, the trial court order appointing a special master characterizes the Special Master's task as "calculat[ing] the amount of military retirement owed by [H]usband to [W]ife." The Special Master, however, correctly perceived that in reality the question presented was to interpret and harmonize the divorce decrees and marital dissolution agreements for both of the parties' divorces. A marital dissolution agreement is a contract; as such, interpretation of a marital dissolution agreement is a matter of law. ***Barnes v. Barnes***, 193 S.W.3d at 498. Thus, in this case, the trial court in effect referred to the Special Master a question of law. Moreover, the issue referred to the Special Master was not collateral, subordinate or incidental; it was in fact the primary question in the controversy before the trial court. ***Vraney***, 2013 WL 4806902, at *34. While the interpretation of the two divorce decrees and marital dissolution agreements is somewhat thorny, "[m]ere inconvenience is not an acceptable basis for such a referral" to a special master. ***Frazier v. Bridgestone/Firestone, Inc***., 67 S.W.3d 782, 784 (Tenn. Workers' Comp. Panel Oct. 19, 2001).

Therefore, because the issue referred by the trial court below to the Special Master was essentially a question of law and was the primary issue in the case, we must conclude that the issue was "not properly referred to a special master." ***Bradley,*** 2010 WL 2712533, at *6. Accordingly, we decline to apply the standard of review set forth in Tennessee Code Annotated § 27-1-113, and instead review the trial court's conclusions on the issue of Husband's retirement benefits *de novo* with no presumption of correctness.

We now consider the parties' arguments as to the trial court's ruling on Wife's claim to a portion of his retirement benefits. On appeal, Husband contends that the ambiguities in the parties' first marital dissolution agreement should be construed against Wife because Wife's

counsel drafted the provision at issue in a manner that is unclear. He insists that, under the pertinent provision, Wife is entitled only to the percentage of his military retirement benefits that accrued during the parties' first marriage of 16 years. The second MDA, Husband asserts, "simply reiterates" that the retirement benefits awarded to Wife in the first MDA is Wife's separate property. He claims that the second MDA does not award Wife any additional benefits, so her award should be limited to the percentage that accrued to her in the first marriage only. Absent a specific provision awarding Wife additional retirement benefits, Husband argues, the trial court had no basis for extending the original award past the duration of the first marriage. In support, Husband cites caselaw for the proposition that a second marriage between the same parties is treated as though the parties' prior marriage was to different people.

Wife agrees with Husband that the second MDA merely reaffirms the original award in the first MDA. However, she contends that the trial court did not err in holding that she is entitled to at least half of Husband's retirement accrued over 20 years, based on the combined duration of both marriages. Wife points to the paragraph added to the second MDA as supporting the trial court's decision to base her award on the combined 20-year duration of both of the parties' marriages. She maintains that the trial court's ruling should be affirmed in its entirety.

As referenced above, marital dissolution agreements are contractual in the sense that they are the product of the parties' negotiation and agreement. Once the trial court approves the marital dissolution agreement, it becomes legally binding on the parties. ***Long v. McAllister-Long***, 221 S.W.3d 1, 8-9 (Tenn. Ct. App. 2006). This case involves not one, but two divorce decrees, both incorporating by reference a marital dissolution agreement between these parties. As did the trial court below, we must interpret the pertinent divorce decree and the accompanying marital dissolution agreement.

To interpret the marital dissolution agreements, we look first to the language of the agreements themselves, giving the words their natural and ordinary meaning in light of the entire agreement. ***Long,*** 221 S.W.3d at 9 (citing ***Elliott v. Elliott***, 149 S.W.3d 77, 84 (Tenn. Ct. App. 2004); ***Davidson v. Davidson,*** 916 S.W.2d 918, 922–23 (Tenn. Ct. App. 1995)). We seek to avoid rewriting an agreement under the guise of construing it, as the parties are not entitled to an agreement different from the one they negotiated. ***Long,*** 221 S.W.3d at 9 (citing ***Honeycutt,*** 152 S.W.3d at 561-62; ***Pylant v. Spivey,*** 174 S.W.3d 143, 152 (Tenn. Ct. App. 2003)).

We start with the divorce decree for the parties' most recent divorce, which incorporates the second MDA. The second MDA references the award to Wife in the first divorce, including "her said fifty percent (50%) share of [Husband's] retired pay," and states that it "will

continue to be after the entry of this decree, the sole and separate property of [Wife]." On appeal, Husband and Wife both take the position that the second MDA "simply reiterates" the award of retirement benefits to Wife in the first MDA. We agree with this construction.

The task then becomes to interpret the key provision in the first MDA. The language at issue in the first MDA states: "As a division of a portion of the parties' marital property, [Wife] shall have, and she hereby has, a fifty percent (50%) share of [Husband's] military retired pay." This language is consistent with Tennessee law stating that "military retired pay is marital property subject to equitable distribution." ***Johnson v. Johnson***, 37 S.W.3d 892, 895 (Tenn. 2001).

The pivotal language in this provision grants Wife "a fifty percent (50%) share of [Husband's] military retirement pay." The Supreme Court in ***Johnson*** construed a similar award, granting the wife in that case "one-half of all military retirement benefits due the Husband." ***Id.*** at 894. The ***Johnson*** Court held that the language was unambiguous:

> [W]e find that "all military retirement benefits" is unambiguous as it is used in the MDA. We find that "retirement benefits" has a usual, natural, and ordinary meaning. In the absence of express definition, limitation, or indication to the contrary in the MDA, the term comprehensively references all amounts to which the retiree would ordinarily be entitled as a result of retirement from the military. Accordingly, we hold that under the MDA, [the wife] was entitled to a one-half interest in all amounts [the husband] would ordinarily receive as a result of his retirement from the military.

Id. at 896-97 (omitting footnote with citations to similar cases from other jurisdictions). Likewise, in the case at bar, no limitation is placed on the award to Wife. Under the MDA, Wife is awarded 50% of Husband's "military retirement pay." Under ***Johnson,*** then, the key language in the parties' first MDA means 50% of "all amounts to which [Husband] would ordinarily be entitled as a result of retirement from the military," i.e., all of Husband's military retirement pay, regardless of the duration of the parties' marriages.[3] ***Id.***

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[3] In the instant case, as set forth in the Special Master's report, the trial court felt that such an interpretation would be at odds with "the standard practice" in military divorces and "would fly in the face of equity." However, we note that courts are not at liberty to make a new contract for the parties. ***Realty Shop, Inc. v. RR Westminster Holding, Inc.***, 7 S.W.3d 581, 597 (Tenn. Ct. App. 1999) (citing ***Petty v. Sloan***, 277 S.W.2d 355, 359 (Tenn. 1955)). Courts cannot rescue a contracting party from an agreement that later turns out to be ill-advised. ***See Ellis v. Pauline S. Sprouse Residuary Trust***, 280 S.W.3d 806, 814 (Tenn. 2009) ("[C]ourts do not concern themselves with the wisdom or folly of a contract . . . and will not relieve a party of its contractual obligations simply because the contract later proves to be burdensome or unwise."); ***White v. Motley***, 63 Tenn. 544, 549 (Tenn. 1874) ("Courts . . . are

In this appeal, however, Wife seeks only affirmance of the trial court's decision, which based her portion of the retirement benefits on the combined duration of both of the parties' marriages. In her appellate brief, Wife notes that the language in the parties' MDAs "can just as easily be construed as reaffirming that she was to receive 50% of whatever [Husband's] military retirement might be." This statement is offered almost as an aside, a comment in support of her primary argument that the appellate court should affirm the trial court's decision.[4] From our careful review of Wife's appellate brief, she does not raise the issue of whether the trial court erred in declining to award her 50% of *all* of Husband's military retirement benefits, without regard to the duration of the parties' marriages. Since Wife does not raise this as an issue on appeal, we must decline to award her relief she did not seek. ***Hawkins v. Hart*****,** 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001); ***West v. West***, No. M1998-00725-COA-R3-CV, 2000 WL 64268, at *3 (Tenn. Ct. App. Jan. 27, 2000).

To summarize, the MDA language at issue clearly awards Wife 50% of all of Husband's military retirement benefits, without reference to the duration of the parties' first marriage, second marriage, or both marriages combined. Consequently, we decline to adopt Husband's argument that the award should be limited to the duration of the parties' first marriage. Since Wife did not raise as an issue on appeal whether the trial court erred in declining to construe her award as 50% of all of Husband's retirement benefits without regard to the duration of the marriages, we decline to reverse the trial court's decision. Under all of these circumstances, we are constrained to affirm the trial court's decision to interpret the award to Wife as granting her 50% of Husband's military retirement benefits based on the 20-year duration of both of the parties' marriages combined.

Husband next argues that the trial court erred in finding that the delay in retirement processing was not caused by Wife. He claims that military regulations required additional

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not constituted to relieve parties of a bad bargain, or to alter or modify their contracts, to conform to changed conditions and circumstances."); ***see also Knight v. Knight***, No. 03A01-9309-CV-00335, 1994 WL 395011, at *2 (Tenn. Ct. App. July 28, 1994) (citing ***Pipkin v. Lentz***, 354 S.W.2d 87, 92 (Tenn. Ct. App. 1961) ("If this [husband] did, in fact, make a bad bargain, he has no one to blame but himself . . . . The courts should not assume a paternalistic role when the rights of persons who are *sui juris* are involved.")).

[4]At oral argument in this case, counsel for Wife appeared to try to argue, as a separate issue, that the language in the parties' MDAs should be construed as granting Wife 50% of all of Husband's military retirement benefits, regardless of the duration of the parties' marriages. Parties are not permitted to introduce new issues at oral argument in their appeal; they are limited to issues fairly raised in their appellate brief. Tenn. R. App. P. 27; ***Bunch v. Bunch***, 281 S.W.3d 406, 409,410 (Tenn. Ct. App. 2008). From our careful review of Wife's appellate brief, she does not raise the issue of whether the trial court erred in declining to award her 50% of all of Husband's military retirement benefits without regard to the duration of the parties' marriages.

steps to have the retirement payment processed, and Wife's failure to take these steps should relieve Husband of his contractual obligation to pay back retirement benefits to Wife. Not surprisingly, Husband cites no authority supporting this position. The first MDA makes provision to protect Wife in the event of a delay in the "appropriate governmental paying authority['s]" direct payments to Wife: "Until said direct payments are effected, [Husband] shall pay to [Wife] her monthly share of retired pay on the first day of each month. . . ." Husband's argument on this issue is without merit.

Finally, Husband argues that the trial court erred in holding that the alimony provision in the parties' second MDA is unconscionable. He states that, under the second MDA, the duration of the alimony extends for a substantially longer period than the duration of the second marriage and claims that this makes the alimony provision unconscionable. We note that Husband does not seek to modify his alimony obligation based on changed circumstances. Rather, he asks this Court to hold that the original award is unconscionable. The alimony award in the second MDA long ago became final and there was no appeal from it. It is far too late now for this Court to consider any argument that the alimony award to which Husband agreed is unconscionable. Therefore, we decline to address this issue on appeal.

CONCLUSION

The decision of the trial court is affirmed. Costs on appeal are assessed against Defendant/Appellant Mark Steven Lambert and his surety, for which execution may issue if necessary.

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HOLLY M. KIRBY, JUDGE