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ALVORD, J., concurring in part and dissenting in part. Although I agree with the majority's conclusions in parts I, III, IV and V of its opinion, I respectfully disagree with its conclusion in part II, that the parties' separation agreement (agreement) is clear and unambiguous regarding the terms of the obligation of the defendant, Robert R. Simpson, to pay child support and alimony. Specifically, I do not believe that the majority's reading of the relevant provisions of the agreement is the only reasonable reading of the parties' agreement with respect to the defendant's obligation to pay child support and alimony.

Although the trial court determined that the agreement was ambiguous, it went on to ascertain the meaning of the agreement without having been presented with extrinsic evidence of the parties' intent. Consequently, I would reverse the court's judgment denying the motion for contempt filed by the plaintiff, Janel Simpson, with regard to the defendant's child support and alimony responsibilities and I would remand the matter for a new hearing on the motion.

Because the majority's holding in part II of its opinion rests on its conclusion that the agreement is clear and unambiguous, I will focus my analysis on the language of the agreement and the applicable law to explain why I disagree with the majority's conclusion.

As a preliminary matter, I agree with the majority's statement as to the applicable law as set forth by our Supreme Court in *Eckert* v. *Eckert*, 285 Conn. 687, 692, 941 A.2d 301 (2008). See part II of the majority opinion. The following principles are also relevant. "When construing a contract, we seek to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . Extrinsic evidence is always admissible, however, to explain an ambiguity appearing in the instrument. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact. . . . When the language is clear and unambiguous, however, the contract must be given effect according to its terms, and the determination of the parties' intent is a question of law." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, 315 Conn. 370, 383, 107 A.3d 920 (2015). "[A]

contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) Id., 383–84.

In the present case, the parties' dispute revolves around the agreement's familial support provisions. First, there are provisions setting forth fixed child support and alimony obligations. With respect to child support, section 4.1 of the agreement provides, after setting forth the plaintiff's then present earnings of $135,000 and the defendant's then present base draw from employment of $298,686, that the defendant would pay the plaintiff as child support effective with the date of the judgment the sum of $420 per week. With respect to alimony, section 6.3 of the agreement provides in relevant part that the defendant would pay the sum of $1750 per month. Second, the agreement contains provisions setting forth percentage based additional child support and alimony obligations in relation to the defendant's bonus/profit sharing compensation. Then, the agreement, in sections 4.2 and 6.4, provides a limitation that the defendant will not pay child support or alimony on his gross earned income in excess of $700,000.

The threshold determination in this case is whether the language of the agreement is ambiguous. That determination requires consideration of whether the intent of the parties is clear and certain from the language of the agreement or whether the relevant provisions can be "understood in more ways than one." (Internal quotation marks omitted.) *Thomasi* v. *Thomasi*, 181 Conn. App. 822, 831, 188 A.3d 743 (2018). As noted previously, we must examine "the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, supra, 315 Conn. 383.

I am convinced that each party has set forth a plausible construction of the child support and alimony provisions. Because the plausibility of the defendant's construction is fully set forth in the majority opinion, I need not repeat it here. Instead, I focus on why the plaintiff has set forth a reasonable construction, as illustrated herein by the child support provisions of the agreement. The defendant's familial support obligations were crafted in 2013 when the defendant's base annual draw was $298,686. Indeed, his base draw of $298,686 was identified in section 4.1 of the agreement, resulting

in his child support obligation of $420 per week. In 2018, however, the defendant's base draw had increased to $1,277,874. He also received $626,836 in a 2018 bonus payment, which, when added to the 2018 base draw, resulted in the defendant's total earned income in 2018 of $1,904,710.[1] Under the plaintiff's construction of the agreement, the $700,000 earned income cap would continue to be applicable. The defendant's child support obligation would be calculated as follows: The $420 per week child support payment established in 2013 and reflected in the agreement would continue; the defendant's additional child support obligation would be calculated by subtracting from the $700,000 cap the $298,686 base pay in 2013, which was used to arrive at the $420 per week primary obligation, leaving $401,314 of the defendant's $626,836 bonus subject to the additional child support terms of the agreement. That is, this $401,314 portion of the defendant's bonus would be multiplied by the appropriate percentage[2] to determine the defendant's additional child support obligation.

I cannot say that the plaintiff's construction is implausible, as it would give effect to the defendant's $700,000 earned income cap agreed to by the parties in their agreement at the time of their divorce. In other words, the defendant would pay child support on the $700,000 portion of his substantially greater amount of earned income. This construction is especially plausible when contrasted with the result of the defendant's construction, pursuant to which the defendant would pay $420 per week in child support, calculated using the agreement's base pay of $298,686, whether he earned a base pay of $298,686 or a total income of $1,904,710. The defendant's earning $1,904,710, but paying child support calculated only with reference to the artificial base pay of $298,686, reasonably could be viewed as failing to give effect to the agreement's provision for additional child support calculated with respect to his bonus/profit sharing subject to the $700,000 earned income cap.

I recognize the well established principle, relied on by the majority and the defendant in his briefing to this court, that "[a] court simply cannot disregard the words used by the parties or revise, add to, or create a new agreement." (Internal quotation marks omitted.) *Nassra* v. *Nassra*, 139 Conn. App. 661, 669, 56 A.3d 970 (2012). My conclusion that the plaintiff has set forth a plausible construction of the agreement does not run afoul of that principle because the plaintiff's construction finds support in "the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Emphasis omitted; internal quotation marks omitted.) *Parisi* v. *Parisi*, supra, 315 Conn. 383.

In sum, the provisions governing the defendant's child support and alimony obligations do not convey a

definite and precise intent. See *Russell* v. *Russell*, 95 Conn. App. 219, 222–23, 895 A.2d 862 (2006) (language did not convey definite and precise intent where provision required defendant to pay expenses for completion of treatment program rather than all expenses associated with treatment program). To the contrary, each of the parties has set forth a plausible construction of the provisions, "with both constructions having bases in the language used in the separation agreement." *Parisi* v. *Parisi*, supra, 315 Conn. 385. Because the agreement is ambiguous, its meaning presents "a question of fact that the trial court should have fully considered and resolved." Id.; see also *Hirschfeld* v. *Machinist*, 181 Conn. App. 309, 328, 186 A.3d 771 (court was required to resolve ambiguity by considering extrinsic evidence and making factual findings as to parties' intent), cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018). As recognized by the majority, "the parties did not offer, and the court did not admit, any extrinsic evidence of . . . the parties' intent in drafting the relevant provisions of their agreement." This court cannot find facts in the first instance. See *Fazio* v. *Fazio*, 162 Conn. App. 236, 251, 131 A.3d 1162, cert. denied, 320 Conn. 922, 132 A.3d 1095 (2016). Accordingly, I would remand this case to the trial court to hold a new hearing on the plaintiff's motion for contempt and to "determine the intent of the parties after consideration of all the available extrinsic evidence and the circumstances surrounding the entering of the agreement." (Internal quotation marks omitted.) *Casablanca* v. *Casablanca*, 190 Conn. App. 606, 622–23, 212 A.3d 1278, cert. denied, 333 Conn. 913, 215 A.3d 1210 (2019).

Accordingly, although I concur in parts I, III, IV and V of the majority opinion, I respectfully dissent from part II of the opinion.

[1] The court found that the defendant's gross earned income in the years following the dissolution judgment was as follows: $716,023 in 2014, $861,355 in 2015, $1,223,407 in 2016, $1,716,777 in 2017, $1,904,710 in 2018, and $1,037,220 in 2019.

[2] Section 4.2 of the agreement provides in relevant part: "From the [defendant's] anticipated bonus or profit sharing from his employment received on or after January 1, 2016, which he usually receives in January of each year . . . the [defendant] will pay to the [plaintiff] 9 percent of his gross bonus/profit sharing so long as the [defendant] is obligated to pay child support for two children; and, the sum of the 6 percent of his gross bonus/profit sharing when there is only one minor child for whom the [defendant] is obligated to pay child support. . . ."