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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

2190097

Carlos A. Gonzalez

v.

English Hairrell Gonzalez

2190130

English Hairrell Gonzalez

v.

Carlos A. Gonzalez

Appeals from Shelby Circuit Court
(DR-16-900025)

MOORE, Judge.

In appeal number 2190097, Carlos A. Gonzalez ("the former husband") appeals from a judgment entered by the Shelby Circuit Court ("the trial court") granting, pursuant to Rule 60(b), Ala. R. Civ. P., a motion to set aside a provision included in the judgment divorcing him from English Hairrell Gonzalez ("the former wife"). In appeal number 2190130, the former wife cross-appeals from that same judgment. We reverse the judgment as to the former wife's cross-appeal. We dismiss as moot the former husband's appeal.

Procedural History

This case was previously before this court. In Gonzalez v. Gonzalez, 291 So. 3d 890 (Ala. Civ. App. 2019), this court set forth the procedural history of the case as follows:

> "On January 18, 2016, the former wife filed a complaint for a divorce from the former husband. On January 21, 2016, the former husband filed an answer to the complaint and also counterclaimed for a divorce. On February 11, 2016, the former wife filed a reply to the counterclaim. On September 20, 2016, the trial court entered a judgment divorcing the parties and incorporating an agreement entered between the parties. That agreement provided, in part:
>
> > "'E. Life Insurance for the Use and Benefit of the Minor Child. The parties shall each maintain by paying the required

> monthly premiums the existing whole life insurance policy on the life of the [former husband] to fund a special needs trust for [T.G.], the special needs minor child [of the parties]. The monthly payment to maintain said policy shall be paid by each party with the [former husband] paying 50% of the premiums and the [former wife] paying 50% of the premiums. The ownership of said life insurance policy shall be transferred to the Special Needs Trust of [T.G.] as the owner and the beneficiary of such life insurance policy. The loan due on the [former husband's] life insurance policy in the amount of $73,000.00 shall be paid by the [former wife] and will be considered a satisfaction of a percentage of the equity from the marital residence ... that is due the [former husband]. The parties shall be required to maintain such life insurance policy until the earlier of the death of [T.G.] or the death of the [former husband]. [The former husband] and [the former wife] shall both have access to information concerning the above life insurance policy at all times, as requested by either party. If either party is not able to make the above required full payment upon the date the same is due, said party will notify the other party so that there are not any lapses in coverage. Any additional payments made by one party for the other party will be considered as a loan that must be reimbursed to the party that makes the payment....'

"On December 8, 2016, the former husband filed a motion for relief from the divorce judgment, pursuant to Rule 60(b)(1) and (2), Ala. R. Civ. P. The former husband challenged the above-quoted provision of the divorce judgment concerning the funding of the special-needs trust for the benefit

of T.G. ('the trust') with his whole-life-insurance policy ('the life-insurance policy'); he argued that that provision of the divorce judgment did not comply with the intent of the parties. On January 3, 2017, the former wife filed a response to the former husband's motion.

"On May 24, 2018, the trial court held a trial on the Rule 60(b) motion. The former husband testified that, when he signed the divorce agreement that was incorporated into the divorce judgment, he had not intended to transfer the life-insurance policy to the trust during his lifetime. He testified that he had not read that provision of the parties' agreement before he signed the agreement. The former husband also testified, however, that he had complied with the divorce judgment and had signed a document transferring the life-insurance policy to the trust.

"Lindsey Allison, the attorney representing the former husband, testified that she had spoken to the attorney who had drafted the trust document and that that attorney had informed her that there was a problem with the trust. Allison testified that the trust is unworkable now that the parties are divorced but that she did not know what part of the trust was unworkable.

"The former wife testified that she had not been informed that the trust was unworkable before the trial on the former husband's Rule 60(b) motion. She testified that, if there was a problem with the trust, she would be amenable to having any needed changes made.

"On June 4, 2018, the trial court entered an order stating, in part:

> "'[T]he court finds that the [former husband] did agree to ... provision "E" titled "Life insurance for the Use and

> Benefit of the Minor Child." The Court finds that through excusable neglect and mistake the [former husband] did not fully understand the provision and its application upon execution of the final [divorce judgment]. Therefore, regarding Section "E" of the final judgment of divorce, the Court finds the parties did not have mutual assent and/or a meeting of the minds. It is hereby ORDERED that all provisions of the final judgment of divorce shall remain in full force and effect unless altered herein. Provision "E" contained on page 12 of the final judgment of divorce shall be omitted from the final [judgment] in its entirety and be permanently stricken from the final judgment of divorce. The removal of said provision shall apply retroactively and date back to the entry of the final judgment of divorce. Both parties shall sign the appropriate documents in accordance with this Order including any reversal or repayment of any documents or monies that have been made in compliance with Section "E" of the final judgment of divorce.'

> "On July 12, 2018, the former wife filed her notice of appeal."

291 So. 3d at 891-92.

In Gonzalez, this court determined that T.G. was an indispensable party to the case. 291 So. 3d at 893. This court held: "Because the interests of the former husband and the former wife, who were both obligated to maintain the life-insurance policy, are possibly adverse to the interests

of T.G., a guardian ad litem was required to be appointed to represent the interests of T.G." 291 So. 3d at 893-94. This court reversed the trial court's judgment and remanded the cause for the trial court to conduct further proceedings consistent with this court's opinion. 291 So. 3d at 894. Our certificate of judgment was issued on July 3, 2019.

Following this court's reversal and in accordance with this court's instructions in Gonzalez, the trial court appointed a guardian ad litem to represent the interests of T.G. The trial court also held another hearing on the matter. Thereafter, the trial court entered the following order on September 30, 2019:

> "After hearing arguments from counsel, the recommendations of the Guardian ad Litem, and additional testimony from the parties, it is ORDERED, ADJUDGED and DECREED as follows:
>
> "1. This Court finds that both parents are fit and proper to handle the financial needs of [T.G.].
>
> "2. This Court's Order of June 4, 2018 should not have removed provision 'E' titled 'Life Insurance for the Use and Benefit of the Minor Child' in its entirety.
>
> "3. The Final Judgment of Divorce is hereby modified in that [the former h]usband is awarded his whole life insurance policy and the [former wife] shall pay the sum of $73,000.00 back to the whole life insurance policy in [the former h]usband's name

> within ten (30)[1] days from the date of this Order Further, [the former husband] shall pay 100% of all future monthly premiums due on his policy. Other provisions of Paragraph 'E' shall be removed from the Final Judgment of Divorce.
>
> "4. The [former husband] is prohibited from encumbering or removing the $73,000 in question from said policy.
>
> "5. [The former husband] shall provide semi-annual statements to [the former wife] every year."

The former husband filed his notice of appeal on October 29, 2019. The former wife filed her cross-appeal on November 6, 2019.

Discussion

On appeal, the former husband argues that "the trial court abused its discretion by ... prohibiting the former husband from encumbering or removing the cash value of his whole life insurance policy" and by "requiring the former husband to provide semi-annual statements to the former wife every year." On cross-appeal, the former wife argues that the trial court "erred in amending the parties' thoroughly-negotiated divorce agreement by removing, and later

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[1]We note the discrepancy in this paragraph regarding the period for the former wife to repay the $73,000; however, the discrepancy is of no effect in light of our disposition of the former wife's cross-appeal.

modifying, the life insurance clause in the Final Judgment of Divorce ...." She specifically argues that "[a]ny lack of mutual assent or meeting of the minds on the part of the former husband was caused by his own failure or refusal to read the very agreement he sought to renounce." We find the former wife's position dispositive.

As noted previously, at the May 24, 2018, trial, "[t]he former husband testified that, when he signed the divorce agreement that was incorporated into the divorce judgment, he had not intended to transfer the life-insurance policy to the trust during his lifetime" and "that he had not read that provision of the parties' agreement before he signed the agreement." Gonzalez, 291 So. 3d at 892. In the June 4, 2018, order, the trial court stated that, "through excusable neglect and mistake[,] the [former husband] did not fully understand the provision and its application upon execution of the final [divorce judgment]." At the hearing following this court's reversal in Gonzalez, the trial court reiterated that the former husband had not read the parties' agreement; specifically, the trial court stated:

> "[T]he fact that [the former husband] did not read it and I believe that he was being truthful when he

> said that so I found that there was excusable neglect because ... when he ... had to turn[] his money over to the trust I think he was clearly surprised that was the application of it."

This court has held: "Rule 60(b) is not designed to relieve a party from the deliberate choices he or she has made." Ex parte Mealing, 142 So. 3d 720, 726 (Ala. Civ. App. 2013). Moreover, in Gray v. Bain, 164 So. 3d 553 (Ala. 2014), our supreme court reversed an order entered by the trial court in that case that granted a Rule 60(b) motion to set aside a judgment incorporating a settlement agreement based on a unilateral mistake. The supreme court reasoned, in part:

> "'Rule 60(b)(1)[, Fed. R. Civ. P.,] authorizes the court to give relief from a judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable neglect,"' but 'judgments entered as a result of settlements may be reopened [only] when fraud or mutual mistake is shown.' 11 Charles Alan Wright, Arthur K. Miller & Mary Kay Kane, Federal Practice & Procedure § 2858 (2012). The reason for this is that, although a mutual mistake of fact will permit a court to reform or rescind a binding settlement agreement, a unilateral mistake does not justify such relief. 'Unilateral mistakes do not support reformation (absent some fraud or misrepresentation). Moreover, one party is not customarily charged to know what is on the other party's mind, so as to concoct some constructive mutual mistake where there is but a unilateral mistake.' 27 Richard A. Lord, Williston on Contracts § 70:109 (4th ed. 2003). 'As a general rule, rescission is unavailable where a unilateral mistake is unknown to the other party (even though that

mistake relates to a basic assumption of a contract and has a material effect on the agreed exchange of performances).' Williston at § 70:111. This Court has explained:

> "'We have often had occasion to point out the grounds on which a court of equity will assume jurisdiction to reform written instruments. "First, where there is a mutual mistake, that is, where there has been a meeting of minds, an agreement actually entered into, but the contract, deed, settlement, or other instrument, in its written form, does not express what was really intended by the parties thereto; and, second, where there has been a mistake of one party, accompanied by fraud or other inequitable conduct of the remaining parties;" and also where there has been a mistake on the part of the scrivener. Of course the mistake must be unmixed with negligence on the part of the party seeking relief.'

"Ballentine v. Bradley, 236 Ala. 326, 328, 182 So. 399, 400-01 (1938). There was no allegation that [the unilateral] mistake was accompanied by fraud or other inequitable conduct on [the] part [of the other party to the agreement]. See also Hackney v. First Alabama Bank, 555 So. 2d 97, 101 (Ala. 1989) (citing the Restatement (Second) of Contracts §§ 153 and 154 (1979), and holding that, unlike a mutual mistake of fact, a unilateral mistake will not serve as a basis for avoiding the contract unless the effect of the mistake is such that enforcement of the contract would be unconscionable or the nonmistaken party had reason to know of the mistake or his or her fault caused it). Meyer v. Meyer, 952 So. 2d 384, 391-92 (Ala. Civ. App. 2006) (declining to authorize reformation or rescission of a contract as the result of a mistake that the court concluded was not a 'mutual mistake' and relying on § 8-1-2,

> Ala. Code 1975, which provides as follows: 'When, through fraud, a mutual mistake of the parties or a mistake of one party which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised by a court on the application of the party aggrieved so as to express that intention, so far as it can be done without prejudice to the rights acquired by third persons in good faith and for value.').
>
> "Federal authorities also concur that only a mutual mistake, and not a unilateral one, permits a court to rescind or reform a binding settlement agreement."

164 So. 3d at 564-65 (footnote omitted).

In the present case, the trial court found that the former husband had failed to read the parties' settlement agreement before he signed it. However, as this court held in Mealing, "Rule 60(b) is not designed to relieve a party from the deliberate choices he or she has made." 142 So. 3d at 726. Additionally, although the trial court found that the former husband had not understood the relevant provision of the parties' settlement agreement, based on our supreme court's decision in Gray, we conclude that the former husband's unilateral mistake of not reading and/or understanding the settlement agreement before he signed it was

not a sufficient basis for setting aside provision "E" of the judgment incorporating the parties' settlement agreement.

Based on the foregoing, we conclude that the trial court exceeded its discretion in granting the former husband's Rule 60(b) motion. Therefore, we reverse the trial court's judgment and remand the cause for the entry of a judgment in accordance with this opinion. Our disposition of the former wife's cross-appeal renders moot the issues raised by the former husband.

2190097 -- APPEAL DISMISSED AS MOOT.

2190130 -- REVERSED AND REMANDED.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.