STATE OF MICHIGAN

COURT OF APPEALS

KAREN LEE MONICATTI,

Plaintiff/Counterdefendant/Cross-Appellant,

v

MICHAEL DEAN MONICATTI,

Defendant/Counterplaintiff/Cross-Appellee.

UNPUBLISHED
July 20, 2001

No. 222811
Macomb Circuit Court
Family Division
LC No. 97-000214-DM

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

This matter is before this Court limited to plaintiff's cross-appeal from a judgment of divorce.[1] We vacate in part the judgment of divorce and remand for further proceedings.

In January 1997, plaintiff filed a complaint for divorce and one month later, defendant filed a counterclaim for divorce. The primary issues revolved around the division of property. The parties ultimately agreed to the division of their property and alimony and the terms of that agreement were placed on the record at a hearing on May 11, 1999. The trial court subsequently instructed the parties to prepare a divorce judgment incorporating the terms of their agreement. By August 26, 1999, plaintiff prepared a proposed judgment of divorce that she believed conformed to the parties' settlement agreement and filed a motion for entry of judgment. Defendant, however, denied that plaintiff's proposed judgment conformed to the parties' settlement agreement and asked the trial court to enter his proposed judgment.

A hearing was held on September 20, 1999, and defendant placed several objections to plaintiff's proposed judgment. The trial court agreed with defendant's objections, and changed two provisions in plaintiff's proposed judgment relating to alimony and interest earned on two pension accounts awarded to plaintiff. We conclude that the trial court erred by entering a judgment that was contrary to the terms of the parties' settlement agreement stated on the record.

[1] Although defendant filed a claim of appeal on October 11, 1999, his appeal was involuntarily dismissed for failure to file a brief, although plaintiff's cross-appeal was allowed to continue, in an unpublished order entered on April 28, 2000.

Under MCR 2.507(H), a party is bound by the terms of a settlement agreement placed on the record, even if it is not reduced to a final judgment. Absent a showing of fraud, duress, or similar factors, it is appropriate for a court to enforce the terms of the parties' agreement. *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). An agreement to settle a lawsuit is a contract and general contract principles apply. *Reed v Citizens Ins Co*, 198 Mich App 443, 447; 499 NW2d 22 (1993). The primary goal regarding the construction or interpretation of a contract, including a settlement agreement, is to honor the parties' intent. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999).

The general rules regarding settlements in a divorce case apply to property settlements negotiated by the parties. *Kline v Kline*, 92 Mich App 62, 71; 284 NW2d 488 (1979). Thus, absent fraud, duress, or mutual mistake, the court should uphold and accept the parties' settlement agreement. *McBride v Foutch*, 140 Mich App 837, 841; 366 NW2d 58 (1985); *Kline*, *supra* at 71-72. With regard to matters involving alimony, child support, and custody, however, the trial court retains some discretion and the parties cannot conclusively agree on these matters, to the exclusion of the trial court. *Id*. at 72.

Over plaintiff's objection, the trial court included in the divorce judgment a provision indicating that alimony would be terminated if plaintiff cohabited with another male. We conclude that the trial court erred by including this provision in the divorce judgment. At the settlement hearing, the parties addressed the circumstances under which alimony could be terminated, mentioning only that it would be terminated in the event of plaintiff's death or remarriage. Indeed, we note that it was defense counsel who explicitly stated the terms of alimony on the record. Because the parties' expressly addressed this issue on the record at the settlement hearing and agreed upon the conditions under which alimony would be terminated, which agreement did not include a situation involving cohabitation, the addition of a provision providing that alimony would be terminated in the event of cohabitation is contrary to the parties' agreement. Furthermore, the form of alimony agreed upon was alimony in gross, since it was part of the parties' property settlement, and not principally intended for plaintiff's support.[2] *Staple v Staple*, 241 Mich App 562, 566; 616 NW2d 219 (2000). Thus, the parties could decide the question of alimony between themselves as part of the property settlement without requiring the trial court's discretionary review of the matter. Consequently, the divorce judgment must be vacated in part and modified on remand to provide that alimony may be terminated only in the event of plaintiff's death or remarriage, in accordance with the parties' agreement as placed on the record at the hearing on May 11, 1999.

The trial court also erred when it awarded defendant a portion of the appreciation and interest in two pension accounts that were awarded to plaintiff. At the settlement hearing on May 11, 1999, the parties agreed that these pensions would be awarded to plaintiff. The parties did not place any limits or restrictions on the award of these assets. Although defendant claimed

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[2] Specifically, the terms of the alimony agreement, as stated on the record by defense counsel, was that defendant would pay plaintiff $3,000 a month for five years, or terminating upon plaintiff's death or remarriage.

below that he intended that plaintiff was only to receive the value of these accounts as reflected in the last quarterly statement received on March 31, 1999, that alleged understanding was not placed on the record at the settlement hearing on May 11, 1999. On the contrary, the record simply reflects that these accounts were to be awarded to plaintiff outright. Accordingly, we believe that the trial court's decision to split equally any appreciation in the value of these accounts before the judgment was entered is inconsistent with the parties' agreement, as previously placed on the record. *Mikonczyk, supra* at 350-351. Therefore, the divorce judgment shall be modified on remand to award this disputed amount to plaintiff. We agree, however, that defendant is entitled to reimbursement of any contributions that he made after June 1, 1999, the effective date of the property division, along with his prorated share of interest on those contributions, inasmuch as the parties did not agree that plaintiff would be entitled to those contributions.

Vacated in part and remanded for additional proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Kathleen Jansen