

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

SAMANTHA L. ROSENBERG, *Petitioner/Appellant,*

v.

JAYSON ROBERT CONZONER, *Respondent/Appellee.*

No. 1 CA-CV 19-0153 FC

FILED 4-7-2020

Appeal from the Superior Court in Maricopa County

No. FC2006-053796

FC2008-005445

(Consolidated)

The Honorable Roy C. Whitehead, Judge

VACATED AND REMANDED

COUNSEL

Samantha L. Rosenberg, Ladysmith, VA
Petitioner/Appellant

Jayson Robert Conzoner, Phoenix
Respondent/Appellee

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Jennifer B. Campbell joined.

CATTANI, Judge:

¶1 Samantha Rosenberg (“Wife”) appeals the superior court’s judgment in these post-dissolution proceedings. She argues the judgment does not accurately reflect the terms of the parties’ settlement agreement read in open court. For reasons that follow, we vacate the judgment and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Wife filed for the dissolution of her marriage to Jayson Conzoner (“Husband”) in 2008, and the marriage was dissolved by consent decree the following year. The two have one child together. Wife lives out-of-state, and Husband and Wife share the child’s travel expenses equally under a previous post-decree ruling. Over the course of multiple, extensive post-decree proceedings, the superior court twice awarded Husband attorney’s fees based on Wife’s unreasonable conduct.

¶3 In March 2018, Husband filed a contempt petition, asserting that Wife had failed to pay the fee awards. He requested that rather than paying his share of travel expenses to Wife directly, his portion be deducted from the balance of the fee awards. In response, Wife filed a contempt petition, arguing that Husband had improperly been refusing to provide his share of the travel expenses and otherwise failed to comply with the terms of the superior court’s ruling. The court held an informal settlement conference to resolve the cross-petitions.

¶4 The parties reached an agreement at the settlement conference, and Father’s counsel read the agreement into the record, including the following:

Instead of paying installment payments or any sum of money at the moment directly to [Husband], the Court previously ordered that based upon the long distance parenting plan that the parties were to share in all travel costs associated with the minor child 50/50.

ROSENBERG v. CONZONER
Decision of the Court

However, moving forward, those travel costs will be assumed a hundred percent by [Wife] and they, however, will be subtracted from the [fee awards]. That'll continue until there's either a zero balance or there's no longer []travel because the child has . . . reached majority.

¶5 Both parties agreed to the settlement, and the court found the agreement fair and equitable. At the court's request, Father's counsel lodged a form judgment reducing the agreement to writing. After several revisions, the final version of the judgment stated:

[Wife] and [Husband] are equally (50/50) responsible for costs associated with the minor child's travel to and from [Wife's] out of state parenting time. . . . The parties agree, and it is therefore ordered that . . . [Husband's] half of future travel costs associated with the minor child's travel to and from [Wife's] parenting time shall be offset against [the fee awards] . . . until that judgment is satisfied in full, if ever.

¶6 Wife objected to this language, arguing that at the settlement conference, both parties agreed that all travel expenses—rather than just Husband's share of travel expenses—would be offset against the fee awards. The superior court entered the judgment over Wife's objection, and Wife moved to vacate the judgment on the same grounds. The court denied the motion, and Wife appealed. We have jurisdiction under A.R.S. § 12-2101(A)(2).

DISCUSSION

¶7 Wife challenges the judgment on two bases. First, she argues the court erred by entering a judgment based on an agreement under Rule 69 of the Arizona Rules of Family Law Procedure that she did not sign. *See* Ariz. R. Fam. Law P. 69(a)(1) (providing that a Rule 69 agreement "in writing and signed by the parties" is valid). Her signature, however, was not required here. Rule 69(a)(2) provides that an agreement is valid and binding if "the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or court reporter." Here, the terms of the agreement were stated on the record before the superior court judge, so Rule 69(a) was satisfied.

¶8 Next, Wife argues the superior court erred by entering the form of judgment after Husband's counsel changed the terms of the agreement from those stated on the record. The term at issue, as stated on the record, provides that "those travel costs will be assumed a hundred

ROSENBERG v. CONZONER
Decision of the Court

percent by [Wife] and . . . will be subtracted from the” fee awards Wife owes Husband. Wife contends that “those travel costs” unambiguously refers to the entire travel expense incurred by both parties, rather than just Husband’s portion, and that “they, however, will be subtracted from the [fee awards]” means the sum of all travel expenses will be subtracted from the fee awards.

¶9 In his response to Wife’s objection in superior court,¹ Husband argued Wife’s interpretation of the record was objectively unreasonable:

[T]he intent of the party’s agreement was not that [Wife] receive 100% credit against the judgment for all travel costs. Such interpretation is illogical, as [Wife] would in essence “double dip” and [Husband] would not receive benefit of repayment of the . . . [fee awards] in full. Thus, [Wife’s] assertion and request that 100% of said costs be applied to the judgment creates an inequitable result.

¶10 A plain reading of the settlement conference transcript is consistent with Wife’s interpretation. The term as read into the record does not provide any distinction between Husband and Wife’s portion of travel costs. However, Husband correctly pointed out to the superior court that Wife’s understanding would effectively cut the amount she owes him on the fee awards in half, resulting in a windfall for her, and for seemingly no reason.

¶11 Although it is not the role of this court to reevaluate the reasonableness of parties’ settlement agreements, the superior court must approve an agreement for it to become binding. Ariz. R. Fam. Law P. 69(b). On this record, it is unclear whether the superior court ever approved the term as contemporaneously understood by both parties.

¶12 At the settlement conference, the superior court stated it found the agreement reasonable as it was read into the record. However, after Husband’s counsel prepared the form judgment, Wife repeatedly objected and argued the judgment should be modified to reflect her understanding. The superior court rejected Wife’s objections, which

¹ Father failed to file an answering brief on appeal. Although we could treat this as a confession of reversible error, *Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994), we decline to do so and instead exercise our discretion to decide the appeal on the merits.

ROSENBERG v. CONZONER
Decision of the Court

indicates that the court had the same understanding as Husband and found Husband's interpretation reasonable in the first instance. Thus, it is unclear whether the parties ever mutually reached an agreement that the court approved.

¶13 Wife requests that this court vacate the judgment and direct the superior court to enter a judgment consistent with her interpretation. But on this record, Husband's interpretation of the agreement appears to be more reasonable—as found by the superior court. Thus, it is as likely that Husband misunderstood Wife as it is that Wife misunderstood Husband. Accordingly, we vacate the judgment and remand for further proceedings.

CONCLUSION

¶14 The judgment is vacated, and the case is remanded for further proceedings.



AMY M. WOOD • Clerk of the Court
FILED: AA