IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

SARAH ALI ASAD,

Appellant,

v. Case No. 5D21-316

ASAD ALI SHEIKH,

Appellee.

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Opinion filed July 9, 2021

Appeal from the Circuit Court for Seminole County,
Michael J. Rudisill, Judge.

Sarah A. Mian, Lake Mary, pro se.

Samuel R. Filler, II, Longwood, for Appellee.

EVANDER, J.

Sarah Ali Asad, n/k/a Sarah A. Mian ("Former Wife") appeals an order denying her motion to reform a mediated marital settlement agreement ("MSA"). We reverse. The trial court erred in failing to hold an evidentiary

hearing where the motion sufficiently alleged the existence of a mutual mistake.

The parties' MSA was entered into approximately six months after the filing of Former Wife's petition for dissolution of marriage. Six days after the filing of the parties' MSA, Former Wife filed a "Motion to Correct Mutual Mistake," alleging that as a result of a drafting oversight, the disposition of a particular Fidelity Investment account was omitted from the MSA. That account was alleged to be a marital asset but was titled in Former Husband's name only. Thereafter, the trial court entered a final judgment dissolving the marriage, incorporating the MSA into the final judgment, and expressly reserving jurisdiction to address "the pending issue surrounding the Husband's Fidelity Investment Account."

At a subsequent hearing, Former Wife was prepared to present the testimony and/or mediation notes from the mediator.[1] However, the trial court determined that it should first address the issue of whether it was necessary for the trial court to conduct an evidentiary hearing. After hearing argument of counsel, the trial court took the matter under advisement.

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[1] Contrary to Former Husband's argument below, the mediator would be permitted to provide testimony "[o]ffered for the limited purpose of establishing or refuting legally recognized grounds for . . . reforming a settlement agreement reached during a mediation." § 44.405(4)(a)5, Fla. Stat. (2019).

Thereafter, the trial court entered an order denying Former Wife's motion. In its order, the trial court recited that an evidentiary hearing was "not warranted." We disagree.

"A court of equity has the power to reform a written instrument where, due to a mutual mistake, the instrument as drawn does not accurately express the true intention or agreement of the parties to the instrument." *Providence Square Ass'n v. Biancardi*, 507 So. 2d 1366, 1369 (Fla. 1987). "A mistake is mutual when the parties agree to one thing and then, due to either a scrivener's error or inadvertence, express something different in the written instrument." *Circle Mortg. Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994). Thus, the reformation of a written instrument does not alter the agreement of the parties. Rather, the reformation corrects a defective written instrument so that it accurately reflects the parties' agreement. *Providence Square*, 507 So. 2d. at 1369–70. Parol evidence is admissible "for the purpose of demonstrating that the true intent of the parties was something other than that expressed in the written instrument." *Id*. at 1371.

Where, as in the instant case, a motion to reform a mediated settlement agreement adequately alleges a claim for relief based on mutual mistake, the issue must be resolved by evidentiary hearing. *Moree v. Moree*, 59 So. 3d 205, 207–08 (Fla. 2d DCA 2011). Accordingly, we conclude that the trial

court erred in failing to conduct an evidentiary hearing on Former Wife's motion.

REVERSED and REMANDED FOR AN EVIDENTIARY HEARING.

EDWARDS and WOZNIAK, JJ., concur.