

Third District Court of Appeal

State of Florida

Opinion filed October 23, 2019.

Not final until disposition of timely filed motion for rehearing.

No. 3D17-2175

Lower Tribunal Nos. 16-20239 & 17-12323

Joyce D. Hellard,
Appellant,

vs.

William I. Siegmeister,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ariana Fajardo Orshan, Judge.

Karen J. Haas, for appellant.

Davis Smith & Jean, LLC, Sonja A. Jean and Laura Davis Smith, for appellee.

Before FERNANDEZ, LINDSEY and HENDON¹, JJ.

FERNANDEZ, J.

¹ Judges Lindsey and Hendon did not participate in oral argument.

Joyce D. Hellard, the wife, appeals the trial court's Final Judgment of Dissolution of Marriage and Order Granting Husband's Motion for Summary Judgment. Following a review of the record, we affirm the Final Judgment of Dissolution of Marriage as to that portion of the judgment that dissolves the marriage, finds that the Marital Settlement Agreement was binding on the parties, and awards the marital home to the wife. However, we reverse the Final Judgment with respect to the equitable distribution award made by the trial court regarding other real property titled in each party's name. As to the trial court's Order Granting Husband's Motion for Summary Judgment, we affirm that portion that equitably distributed the parties' marital debts and assets that existed as of the date the Marital Settlement Agreement was entered in 2001. However, with respect to marital assets the parties acquired after they reconciled in 2001, when the Marital Settlement Agreement was no longer in effect, we reverse the equitable distribution award, as it did not address any after-acquired property, namely, the South Miami condominium and non-retirement investment accounts at issue. We affirm without further discussion regarding all other issues.

Factual and Procedural History

The husband, William I. Siegmeister, and wife were married on December 27, 1997, in Miami-Dade County, Florida. There were no children of the marriage, but the parties had assets and income. Both parties are retired Miami-Dade County

teachers, but the husband is also a licensed insurance agent. The wife owns a premarital house located at 8083 S.W. 158th Court, Miami, Florida, where the parties resided during their marriage. The husband owns a premarital house located at 7712 Altamira Avenue, Coral Gables, Florida, which is the principal place of business for Siegmeister Insurance Company, of which the husband was the Chief Financial Officer until after the wife filed for divorce, and where the husband's two sons from a previous marriage resided during most of the parties' marriage.

In late 2000, the parties briefly separated for a few weeks, and the wife filed for divorce. The parties subsequently signed a Marital Settlement Agreement ("MSA") on January 11, 2001, that was predicated upon the parties living separately. Upon the husband's diagnosis of colon cancer, however, the parties reconciled, and the wife voluntarily dismissed the petition for dissolution of marriage. The husband alleges there is a dispute as to when and to what extent the parties reconciled. The wife claims that the parties continued living together as husband and wife in the wife's premarital home for fifteen-and-a-half years until they separated on July 11, 2016.

On August 22, 2016, the wife filed a Verified Petition for Dissolution of Marriage that sought equitable distribution of the marital assets and debts, an award of her non-marital and pre-marital assets, appreciation of premarital property and stocks/investments to the extent that marital funds and labor were expended,

alimony, and attorneys' fees. Thereafter, the husband filed a Response and Counter-Petition on September 14, 2016, seeking equitable distribution of all marital assets, appreciation of premarital property and investments to the extent of expenditure of marital funds and labor, alimony, and attorney's fees. The husband also alleged the existence of a prenuptial agreement ("PA") dated December 26, 1997, and an MSA dated January 12, 2001, although he did not attach the agreements to his pleading. In the wife's Amended Answer to Counter-Petition, she raised affirmative defenses, including waiver or abandonment by the husband of any alleged PA. The wife also denied that the MSA survived after the parties reconciled and that it did not determine the rights of the parties.

On May 15, 2017, the husband alleged for the first time that the PA controlled all financial issues between the parties and submitted a copy of the PA in his Answer to Amended Verified Petition for Dissolution of Marriage; Amended Counterpetition for Dissolution of Marriage. He claimed that the wife had the only original of the parties' PA but did not mention the MSA.

Thereafter, on July 27, 2017, the husband filed a Motion for Summary Judgment and Request for Entry of Final Judgment of Dissolution of Marriage, claiming for the first time that the parties lived separately in their respective homes and that the MSA controlled. He also filed a copy of the MSA. On August 17, 2017, the wife filed her Response in Opposition to Motion for Summary Judgment as to

the Marital Settlement Agreement where she alleged that nowhere in the husband's Amended Counterpetition did he mention the MSA, but instead he claimed that the PA controlled. She argued that the husband waived the MSA defense as he never pled it nor did he attach it to his Answer or Amended Counterpetition. She also claimed that the husband falsely and without affidavit claimed that the parties lived separate and apart, when in actuality they lived together after they reconciled until they separated in July 2016. She attached the affidavits of three of their neighbors supporting her position. She claimed that the parties' reconciliation voided the MSA, citing to Cox v. Cox, 659 So. 2d 1051 (Fla. 1995).

On August 17, 2017, the wife filed her Response in Opposition to Motion for Summary Judgment as to the Marital Settlement Agreement, as well as her Verified Motion for Judgment on the Pleadings/To Strike as Sham Prenuptial Agreement Defense, claiming that the PA was a fraud and not applicable. She claimed the husband waived or abandoned the PA because he failed to attach it, provide grounds on how it applied and by requesting relief contradictory to the PA. She also claimed the PA was subject to novation by operation of the merge clause in the 2001 MSA. Less than two days before the hearing, the husband filed an untimely Response to Wife's Affirmative Defenses, rejecting the wife's claim that the PA is a fraud or void and re-affirming that the MSA controlled.

During the hearing on August 23, 2017, the trial court heard the husband's motion for summary judgment but denied hearing the wife's Motion for Judgment on the Pleadings/To Strike as Sham Prenuptial Agreement Defense. The trial court dissolved the marriage. It also upheld the January 11, 2001 MSA as binding on the parties and granted the husband's motion for summary judgment, finding there were no genuine issues of material fact left to be decided in the case because the MSA controlled and that the parties complied with the MSA. Pursuant to the MSA, the wife received the marital home titled in her name. The trial court found that according to Cox, which controlled, the court was mandated to enforce the MSA. The court further noted that only the executed provision that had been performed were not abrogated by the reconciliation of the parties. The court found that the issue of the MSA was properly before the court because the wife raised the issue of the MSA in her affirmative defenses.

As a result, the trial court awarded the real property in each party's names at the time the MSA was executed to each party. The wife, accordingly, was awarded the marital home, as intended in the MSA. The trial court awarded the Jeep Grand Cherokee automobile to the husband and the Toyota Corolla to the wife. The trial court stated that prior to the execution of the MSA the parties had separated all their bank accounts and had divided all their cash balances already. The court further stated that each party waived all claims to the all retirement plans held in their

respective spouse's names. The trial court noted that prior to the execution of the MSA the parties had already divided the jewelry, so each party would retain the jewelry received prior to and during the marriage. With regard to the personal property in the marital home, the trial court stated that prior to the MSA, the parties divided the contents of the marital home and any remaining contents belonged solely to the wife. The court awarded the wife \$15,000 in alimony. Each party was ordered to pay for their own attorney's fees. The trial court thus granted the husband's motion for summary judgment. This appeal by the wife followed.

Analysis

The wife contends, in part, that the trial court erred in granting the husband's motion for summary judgment because it failed to apply the correct rule of law that reconciliation and resumption of marital relations for any period of time renders a previous settlement of property rights void. In response, the husband contends that the trial court properly applied the law regarding reconciliation and executed provisions of a property settlement agreement. A review of the record demonstrates that the trial court erroneously granted summary judgment in the husband's favor with respect to part of the equitable distribution award.

A trial court's order granting summary judgment is reviewed *de novo*. Abundant Living Citi Church, Inc. v. Abundant Living Ministries, Inc., 213 So. 3d 1055, 1057 (Fla. 3d DCA 2017). "Summary judgment is not warranted unless a

hearing is held on proper motion, the record conclusively establishes that there exists no genuine issue of material fact, and the movant is entitled to judgment as a matter of law.” Id.

The trial court correctly found that the issue of the MSA was properly before the court because the wife raised it in her affirmative defenses. Under Florida Rule of Civil Procedure 1.100(a), an affirmative defense is a pleading, thus the trial court did not err in finding that the MSA was applicable. In her Answer to Amended Counterpetition for Dissolution of Marriage, the wife raised several affirmative defenses to the PA, one of which was novation, as the parties’ MSA was executed in 2001. In addition, the wife raised the affirmative defense of abandonment, contending that the husband abandoned the PA by entering into the MSA, which repudiated the terms of the 1997 PA. Accordingly, the trial court did not err in finding that the MSA issue was properly before the court.

The court then turned to Cox, 659 So. 2d at 1053, to determine whether the reconciliation abrogated the MSA. In Cox, the Florida Supreme Court held that “reconciliation of husband and wife and resumption of marital relations for any period of time will render a previous contract and settlement of property rights void.” Id. (quoting Weeks v. Weeks, 197 So. 393, 395 (Fla. 1940)).

The Court in Cox held that “reconciliation or remarriage abrogates the executory provisions of a prior marital settlement agreement unless there is an

explicit statement in the agreement that the parties intended otherwise.” Cox, 659 So. 2d at 1054. However, “executed provisions of a prior settlement agreement are not affected by reconciliation or remarriage absent a reconveyance or a new written agreement to the contrary.” Id.

In the present case, the MSA contemplated that the parties would live “separate and apart.” In addition, under section “8. Equitable Distribution,” “A. Real Property,” paragraph 5, the MSA states:

5. Disclosure: Each party represents and warrants that he or she has made a full and fair disclosure to the other of all of his or her property interests of any nature whatsoever. The parties hereto agree that they have, by the terms of this agreement, settled to their mutual satisfaction all rights that either may have in their real property, whether owned by them jointly or separately,

The MSA further contemplates:

“B. Personal Property,” paragraph 4. “Waiver of Certain Pension Rights:” the MSA states: The parties each waive all further equitable and legal claims to all retirement plans held in their respective spouses’ names,

Also, there was no express provision in the MSA that the MSA would survive reconciliation. The MSA did not explicitly mention the South Miami condominium, nor any non-retirement investment accounts acquired subsequent to the date the parties entered into the MSA.

The wife claims the reconciliation took place a few weeks after the MSA was entered into on January 11, 2001. She submitted three affidavits from neighbors

attesting to this. The husband did not submit any evidence on this issue. The trial court thus found that the parties reconciled their marriage a few weeks after January 11, 2001, and equitably distributed the property that the parties owned at the time the MSA was entered into. However, the parties having reconciled their marriage, according to Cox, the MSA was rendered void with regards to the provisions not already executed, the executory portions. Thus, the property that was acquired after the parties reconciled, namely the South Miami Condominium the husband purchased and non-retirement investment accounts the wife claims he acquired, should also have been distributed by the trial court, according to Cox.

Here, the wife alleges that the husband used marital funds to purchase a South Miami condominium at 7715 S.W. 57th Avenue in Miami-Dade County, Florida, in 2008, as well as used marital funds to create various non-retirement investment accounts. The South Miami condominium could not have been dealt with in the MSA because the husband had not yet purchased that condominium at the time the MSA was entered into.² The husband also testified that he purchased the condominium in 2008. In addition, the investment accounts the wife alleges the husband created after the MSA was entered into could not have been contemplated in 2001. Thus, summary judgment could not have been granted in the husband's

² The husband conceded at oral argument that the South Miami condominium was not included in the trial court's equitable distribution of the parties' marital assets.

favor on this issue because the investment accounts did not exist at the time the MSA was entered into, nor did the husband own the South Miami condominium at the time the MSA was entered into. Thus, the marital assets of the South Miami condominium the wife claims the husband purchased with marital funds after the MSA was entered and the non-retirement investment accounts the husband created subsequent to the MSA should have been subject to equitable distribution. Accordingly, we reverse on this issue, as the court erred in entering summary judgment for the husband because it failed to address these marital assets when it made its equitable distribution award.

We thus affirm the Final Judgment of Dissolution of Marriage and conclude that the wife was entitled to equitable distribution of: 1) the after-acquired South Miami condominium the husband obtained with marital funds, 2) any non-retirement investments also obtained with marital funds acquired by the husband subsequent to the date the MSA was entered into. Regarding the trial court's order granting the husband's motion for summary judgment, we affirm the equitable distribution award with respect to the assets held by the parties and in existence at the time the MSA was entered into. However, we reverse the equitable distribution award in that order, in part, with respect to any new property or accounts that were created or acquired subsequent to the date the MSA was entered into by the parties. We affirm, without comment, the remaining issues on appeal.

Affirmed in part; reversed in part; remanded for further proceedings consistent with this opinion.