SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0710-20

DONNA OHLSON, f/k/a
DONNA WODZINSKI,

Plaintiff-Respondent,

v.

THEODORE WODZINSKI,

Defendant-Appellant.

Submitted January 12, 2022 – Decided May 4, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-2479-97.

Jeannette C. Kellington, attorney for appellant.

Deborah A. Rose, attorney for respondent.

PER CURIAM

In this post-judgment matrimonial case, defendant Theodore Wodzinski moved to sell the marital home pursuant to his interpretation of a handwritten

provision of the parties' property settlement and separation agreement (PSA). Plaintiff Donna Ohlson moved to compel defendant to sign over to her his ownership interest in the marital home pursuant to her interpretation of a typed provision in the PSA or, in the alternative, for an award of half of the payments she had made regarding the marital home since their divorce over twenty years ago. The motion judge held the handwritten provision of the PSA bound the parties but, contrary to defendant's interpretation, did not support the compelled sale of the property and that if plaintiff exercised her option to purchase defendant's interest in the property, she was entitled to a credit of half of the payments she had made regarding the property. Defendant appeals, arguing the motion judge erred in not compelling the sale of the property and in awarding plaintiff credits. Unpersuaded by defendant's arguments, we affirm.

I.

The parties married in 1970, had two children, and divorced in 1998. At the time of the divorce, their son was emancipated but still resided in the marital home. Plaintiff had residential custody of their unemancipated daughter, who was a senior in high school. Plaintiff waived child support and alimony. According to plaintiff, at the time of the divorce, plaintiff worked for a board of

education, earning $20,000 annually, and defendant had a construction company and earned approximately $60,000 to $70,000 annually.

The trial court conducted a hearing on March 12, 1998. Plaintiff was represented by counsel. Defendant appeared without counsel. Default had been entered against him for failing to file responsive pleadings. Plaintiff's counsel gave defendant a proposed PSA she had prepared. After engaging in negotiations, the parties reached an agreement and plaintiff's counsel made handwritten revisions to the proposed PSA. The parties signed the PSA, which was incorporated into the Final Judgment of Divorce issued by the court that day.

Article III of the PSA was entitled "REAL PROPERTY" and contained the following provisions:

> 1. The parties hereto agree that premises known as 32 Newman Street, Metuchen are owned by the parties by the entirety. The parties agree that the property has been discharged from Bankruptcy, and that there is no equity in the property at this time. The parties agree that the husband will sign over all of his right, title, and interest in the property to the wife, as part of equitable distribution.
>
> (A) [Plaintiff] shall have the sole and exclusive right to occupy the marital property as of the signing of this Agreement.
>
> . . . .

> (C) [Plaintiff] shall pay all carrying charges in connection with said real estate including but not limited to real estate taxes, mortgages, insurance, utilities and repairs. In any event, [plaintiff] shall hold [defendant] harmless from any future liability in connection with the premises known as and described as 32 Newman Street, Metuchen[,] New Jersey.

Subparagraph 1(B), which was crossed out, contained the following language:

> [u]pon the execution of this Agreement, [defendant] agrees as part of equitable distribution, that he shall execute a Quit Claim Deed, conveying all of his right, title, and interest in the marital home as set forth above to [plaintiff] and deliver a standard All-State Affidavit of Title in connection therewith.

An additional handwritten paragraph added to Article III states: "[t]he parties will continue as Tenants-In-Common of the marital home which will remain in her possession until both parties agree that it will be sold and the equity divided or [plaintiff] will buy out [defendant]."

Article VII, entitled "INDEBTEDNESS OF PARTIES," contains the following provision:

> 1. [Plaintiff] hereby agrees to save and hold [defendant] free and harmless and indemnified against all debts, obligations and liabilities heretofore or hereinafter incurred by her for the benefit of herself or the children for necessaries or otherwise of any kind or nature.

Defendant moved out of the marital home six months after the divorce. Plaintiff has resided in the marital home since the divorce. She paid the remaining mortgage or home-equity-loan balance of $44,917.11. She paid $196,462.39 in real-estate taxes. She paid approximately $25,000 in homeowner's insurance. According to plaintiff, she paid for all repairs, maintenance, and improvements to the house, totaling $127,473.89. Those improvements included replacing the furnace, installing a new sewer line, replacing bathroom tile, and repairing a rotted deck. Plaintiff asserted she could prove a total outlay of $393,853.39. Defendant made no monetary contribution. According to plaintiff, the parties had no communication about selling the house after the divorce until sometime in 2019 when defendant called plaintiff and advised her that when he returned from a trip, they were "going to talk about dividing the house up." Plaintiff subsequently received a letter from defendant regarding the house.

In 2019, defendant moved to compel the sale of the property, with the sale proceeds to be divided equally. Plaintiff cross-moved for an order enforcing paragraph 1 of Article III of the PSA and compelling defendant to execute a deed conveying his interest in the property to her or, alternatively, an order requiring defendant to reimburse her for one half of all mortgage, property-tax,

homeowner's-insurance, repair, and maintenance payments she has made relating to the property since the divorce.

The motion judge initially issued orders denying the parties' motions, establishing a discovery schedule, and requiring the parties to "have the former marital home appraised." The property was appraised at $440,000 as of November 28, 2019.

The motion judge subsequently conducted a plenary hearing at which both parties testified and were represented by counsel. Plaintiff testified about the PSA and the payments she had made regarding the house. According to plaintiff, subparagraph 1(B) of Article III was crossed-out because defendant "wouldn't go in and sign the papers for the divorce . . . until [she and her lawyer] put these notes in." Plaintiff admitted she had known at the time of the divorce the property was not in her name only and that she and defendant were joint owners. She understood they would remain joint owners until one of them died.

Defendant gave conflicting testimony, stating he had not read the PSA before he signed it, he had read the PSA before signing it, and he had read only one paragraph before he signed it. Defendant asserted that when plaintiff's counsel gave him the PSA, he told her "I just want what I get – what I deserve, 50/50." Defendant admitted the handwritten additions to the PSA were "made

at [his] request" but asserted plaintiff's attorney had added that language "without crossing anything else out." He described his share of the property as his "retirement" and testified he had understood plaintiff could "[l]ive there until the kids were out of the house and that was it." Defendant asserted he and plaintiff had discussed selling the property "[m]any times" but could not provide any dates as to when they had had those discussions. Defendant admitted he had not made any payments toward "the mortgage, the homeowner's insurance, [or] the taxes" after the divorce. Defendant challenged all of plaintiff's repair invoices as being inaccurate and unnecessary.

Neither party presented evidence disputing the representation in the PSA that there was no equity in the property at the time of the divorce. The motion judge ultimately found plaintiff credible and defendant less credible, citing defendant's contradictory testimony.

The motion judge issued an order providing: (1) the parties owned the property as joint tenants in common; (2) the terms of the handwritten paragraph in the PSA were binding on the parties; (3) "[p]laintiff may buy out [d]efendant's interest in the property for the amount of $23,073.30"; and (4) each party was responsible for his or her own counsel fees and costs.

In an accompanying written decision, the motion judge described the issue before him as being which paragraph of the PSA should be enforced: paragraph 1 of Article III of the PSA as plaintiff asserted or the handwritten paragraph as defendant asserted. The judge found the printed text and handwritten text to be "at odds with each other" regarding "the ownership of the property," with the printed text requiring defendant to sign over to plaintiff his interest in the property and the handwritten text requiring the property "to remain in both names as tenants in common."

Citing Pacifico v Pacifico, 190 N.J. 258, 267 (2007), the judge held he had to construe any ambiguities in the PSA in defendant's favor because plaintiff's counsel had drafted the PSA and the handwritten revisions to it. Following that contractual-construction principle, the judge held the handwritten paragraph had "precedence" over the typed paragraph. He also found the handwritten paragraph represented a "meeting of the minds" regarding the marital home given that it had been added to the PSA on the day the parties' divorce was finalized and plaintiff's testimony she understood that day she was not the sole owner of the property. The judge rejected plaintiff's laches argument, finding defendant's unreasonable delay in asserting his claim had not prejudiced plaintiff, given she had agreed in subparagraph 1(C) to pay all the

"carrying charges" relating to the property. Accordingly, the motion judge granted defendant's request to enforce the handwritten paragraph of the PSA, finding the parties remained joint tenants in common with each owning fifty percent of the property and denied plaintiff's request to enforce paragraph 1 of Article III.

The motion judge denied the aspect of defendant's motion seeking to compel the sale of the property. The judge held the handwritten paragraph does not require the sale of the property or that plaintiff purchase defendant's interest in the property. Instead, it provides the property will "remain in [plaintiff's] possession until both parties agree that it will be sold and the equity divided or [plaintiff] will buy out [defendant]." Thus, pursuant to the handwritten paragraph, the parties had to agree to sell the property and plaintiff could not be compelled to sell it.

The motion judge also held that if plaintiff chose to exercise her right to purchase defendant's interest in the property, she would be entitled to a credit of $393,853.39 for the expenses, including the mortgage, taxes, homeowner's insurance, and repairs, she had incurred while she was the primary resident. The judge acknowledged that subparagraph 1(C) requires plaintiff to pay those costs but found "it does not preclude her from seeking reimbursement for half of those

expenses." The judge held disallowing reimbursement "would be a gross inequity to . . . [p]laintiff, providing an enormous windfall to . . . [d]efendant" in that "he would be reaping . . . [p]laintiff's efforts in improving the value of the property." The judge pointed out the parties had agreed in the PSA they had "no equity" in the property, which recently had been valued at $440,000. The judge held if plaintiff decided to purchase defendant's interest "at this time her buyout figure would be $23,073.30," an "amount [that] takes into account . . . [d]efendant's 50% ownership interest ($220,000 based on the appraised value of $440,000), less his 50% responsibility toward the ongoing expenses for the property ($196,921.70 which is half of the expenses paid by . . . [p]laintiff as listed above)."

In this appeal, defendant argues the judge abused his discretion in "reduc[ing] defendant's share" of the former marital home and erred in effectively rewriting the PSA to grant plaintiff credits. Defendant also contends allowing plaintiff to determine when the property is sold is an "absurd" result that prevents defendant from utilizing the "money he would have realized from the sale of the property."

II.

"We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We reverse "only when a mistake must have been made because the trial court's factual findings are 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice . . . .'" Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We review de novo questions of law. Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020). The "interpretation and construction of a contract is a matter of law for the court subject to de novo review." Steele v. Steele, 467 N.J. Super. 414, 440 (App. Div.) (quoting Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998)), certif. denied, 248 N.J. 235 (2021).

We review a trial judge's decision to grant or withhold equitable relief for an abuse of discretion, so long as the decision is consistent with applicable legal principles and the trial judge's findings of fact. Marioni v. Roxy Garments

Delivery Co., 417 N.J. Super. 269, 275-76 (App. Div. 2010). "We have long recognized that a family court is a court of equity, where judges employ a 'full range' of equitable doctrines to deal with matrimonial controversies." Steele, 467 N.J. Super. at 441 (quoting Kazin v. Kazin, 81 N.J. 85, 94 (1979)).

Settlement of matrimonial disputes is "encouraged and highly valued in our system." Quinn v. Quinn, 225 N.J. 34, 44 (2016). Matrimonial settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intentions. J.B. v. W.B., 215 N.J. 305, 326 (2013). "At the same time, 'the law grants particular leniency to agreements made in the domestic arena,' thus allowing 'judges greater discretion when interpreting such agreements.'" Pacifico, 190 N.J. at 266 (quoting Guglielmo v. Guglielmo, 253 N.J. Super. 531, 542 (App. Div. 1992)); see also Steele, 467 N.J. Super. at 441 ("Divorce agreements are necessarily infused with equitable considerations and . . . are not governed solely by contract law."). "The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose.'" Pacifico, 190 N.J. at 266 (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)).

Moreover, "[t]he equitable authority of courts to modify property settlement agreements executed in connection with divorce proceedings is well established." Miller v. Miller, 160 N.J. 408, 418 (1999); see also Addesa v. Addesa, 392 N.J. Super. 58, 66 (App. Div. 2007) (finding "[t]here is no dispute that courts possess the equitable authority to modify privately negotiated property settlement agreements" to ensure fairness and equity in marital dissolutions). A property settlement agreement "must reflect the strong public and statutory purpose of ensuring fairness and equity in the dissolution of marriages." Miller, 160 N.J. at 418. "[A] trial court has a 'duty to scrutinize marital agreements for fairness.'" Steele, 467 N.J. Super. at 440 (quoting Dworkin v. Dworkin, 217 N.J. Super. 518, 523 (App. Div. 1987)).

"[W]hen the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Quinn, 225 N.J. at 45. "To the extent that there is any ambiguity in the expression of the terms of a settlement agreement, a hearing may be necessary to discern the intent of the parties at the time the agreement was entered and to implement that intent." Ibid. We defer to the trial court's credibility determinations because it "'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a

reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412). When parties do not articulate agreement on a term "'which is essential to a determination of their rights and duties' . . . generally because they did not anticipate that it would arise or merely overlooked it," a court supplies "'a term which is reasonable in the circumstances . . . .'" Pacifico, 190 N.J. at 266 (quoting Restatement (Second) of Contracts § 204 (Am. Law Inst. 1981)).

The motion judge correctly found the PSA to be ambiguous, given that, as the judge recognized, paragraph 1 of Article III and the handwritten paragraph were "at odds with each other" regarding "the ownership of the property." The judge properly required a plenary hearing. In resolving the PSA's ambiguity, the judge incorrectly applied the doctrine of contra proferentem, which requires a court when considering an ambiguous contractual term "to adopt the meaning most favorable to the non-drafting party." Sachau v. Sachau, 206 N.J. 1, 7 n.2 (2011). The Court in Pacifico held the trial court had erred in applying the doctrine of contra proferentem when interpreting a property settlement agreement, finding the doctrine to be "inapposite because a prerequisite to its application – unequal bargaining power – did not exist" given the nature of negotiations that result in a property settlement agreement. 190 N.J. at 267-68;

see also Sachau, 206 N.J. at 7-8. But the motion judge did not rely solely on contra proferentem. He also considered the parties' testimony, engaged in "the critical process of evaluating the parties' actual intentions and credibility," Pacifico, 190 N.J. at 268, and determined the handwritten paragraph bound the parties and was enforceable.

Having found the handwritten paragraph to be enforceable and binding on the parties, the motion judge then determined its meaning. He found, contrary to defendant's interpretation, the language of the handwritten paragraph did not permit defendant unilaterally to determine when the property would be sold. Instead, the property "will remain in [plaintiff's] possession until both parties agree that it will be sold and the equity divided or [plaintiff] will buy out [husband]." Accordingly, the motion judge denied the aspect of defendant's motion seeking to compel the sale of the property.

We agree with the motion judge's interpretation of the unambiguous language of the handwritten paragraph. It clearly states the property remains in plaintiff's possession until both parties agree to sell it. And we see no absurdity in that result, considering the reasons set forth by the motion judge, a review of the entire PSA with plaintiff waiving alimony and child support, and the parties' financial situation at the time of the divorce with defendant earning

approximately three times what plaintiff earned. The record is devoid of any credible evidence defendant in their negotiations requested or the parties agreed to a triggering event for the sale of the property or that he requested and they agreed he would have the unilateral right to determine when the property would be sold and plaintiff had to move out. Instead, defendant demanded his fifty-percent share of ownership of the property and that is exactly what he received. Accordingly, we affirm that aspect of the order.

After determining the handwritten paragraph bound the parties and its meaning, the motion judge turned to the alternative relief plaintiff had requested in her cross-motion: an award of half of the mortgage, property-tax, homeowner's-insurance, repair, and maintenance payments she had made regarding the marital residence since the divorce. Recognizing the parties were not in agreement that the property should be sold, the motion judge focused on whether plaintiff was entitled to an award of half of her payments if she bought out defendant's interest in the property, as contemplated in the handwritten paragraph. Finding the PSA did not prevent plaintiff from seeking reimbursement for half of the expenses in the event she bought out defendant's interest and that failure to give her credit for half of those expenses would "be a gross inequity to . . . [p]laintiff, providing an enormous windfall to . . .

[d]efendant," the motion judge held plaintiff was entitled to a credit of half of her payments if she bought out defendant's interest in the property.

We perceive no abuse of discretion in that decision. The PSA is silent as to how the property would be valued and how a purchase price would be determined in the event plaintiff bought out defendant's interest. The motion judge, as he should have been, was clearly concerned with the fairness and equity of the parties' agreement. In using his equitable authority to determine what would happen fairly in the event plaintiff bought out defendant's interest and in awarding her credit for half of her expenditures, the motion judge acted within his discretion.

We note the motion judge's calculation of the amount plaintiff would have to pay defendant to purchase his interest as set forth in the order was based on the appraised value of the property as of November 28, 2019, and the payments plaintiff had made regarding the property. We recognize those figures may change over time and that the buy-out amount set forth in the order is subject to being updated based on a more recent appraisal and current expense figures.

Affirmed.