NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

MICHELE M. HVIZDAK, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RICHARD C. HVIZDAK, Appellee	:	No. 37 WDA 2012

Appeal from the Judgment entered January 5, 2012,
Court of Common Pleas, Butler County,
Domestic Relations at No. F.C. 07-90365-A/C/D

BEFORE: DONOHUE, ALLEN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.: Filed: February 22, 2013

Appellant, Michele M. Hvizdak ("Mother"), appeals from the judgment entered January 5, 2012. We affirm.

Mother and Appellee, Richard C. Hvizdak ("Father") began litigating divorce, equitable distribution, and child custody issues in 2007. On August 22, 2011, the parties reached a global settlement agreement (the "Agreement"). Pursuant to the Agreement, Father would pay Mother $2.5 million. Also pursuant to the Agreement, Father was to contribute $3.5 million to be used to fund a trust ("the Trust") for the parties' children ("the Children") in discharge of Father's child support obligations. Finally, the Agreement required Father to pay $350,000.00 in counsel fees to Mother's attorneys.

The parties retained counsel to draft documents governing the Trust, and the drafting of the Trust documents took place between August 22 and a scheduled September 28, 2011 bankruptcy hearing. The drafting process was contentious, and in the hours immediately preceding the September 28, 2011 bankruptcy hearing Mother requested removal of language in the Trust stipulating that the Trust funds were to be spent for the benefit of the Children. Mother believed that she would be able to spend trust funds for her own support as well as for the Children. Mother alleges that she signed the Agreement and the Trust documents believing that the requested revision had been made. A federal bankruptcy judge ratified the signed Agreement and Trust documents on September 28, 2011 and dismissed the bankruptcy proceeding.

Mother argues that the Trust documents are not binding because the parties did not reach a meeting of the minds as to Mother's ability to use the Trust funds for herself as well as for the Children. Father argues that the purpose of the Trust was to ensure that sufficient funds were available to satisfy his obligation to support the Children. Father agrees that Mother, as caretaker, will benefit directly or indirectly from using the Trust money for items such as housing and food, but Father argues that the parties never intended Mother to have unfettered discretion to use the Trust money for any purpose.

After the ratification of the Agreement in bankruptcy court, Father provided the agreed upon funds. Mother has declined to use the money to fund the Trust, pending the outcome of the parties' current dispute. Father therefore filed a petition for special relief on October 25, 2011, asking the trial court to direct Mother to fund the Trust pursuant to the Agreement or to replace Mother as trustee. The trial court granted Father's petition in relevant part on December 8, 2011, and entered an order directing the parties to execute the Trust documents. Mother filed a motion to reconsider on December 28, 2011. After conducting a hearing on Mother's reconsideration motion, the trial court denied relief in the order presently on appeal.[1]

Mother filed a timely notice of appeal on January 6, 2012. She raises two issues:

> I. Did the lower court abuse its discretion when it found that the parties agreed upon a comprehensive settlement when the clear weight of the evidence presented to it established that the agreement adopted by the lower court omitted a provision deemed by

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[1] Father argues that Mother should have appealed from the December 8, 2011 order, given that the trial court denied reconsideration of that order. On that basis, Father has filed a motion to quash this appeal. We disagree with Father's argument, as the trial court's January 5, 2012 order ratified certain agreed upon revisions to the documents at issue on appeal. The January 5, 2012 order is, therefore, the order that finally "disposed of all claims." Pa.R.A.P. 341(b)(1). We further observe that Mother's January 6, 2012 notice of appeal was timely as to the December 8, 2011 order. ***See*** Pa.R.A.P. 903(a). The asserted procedural error does not implicate this Court's jurisdiction. We will deny Father's motion to quash.

> [Mother] to be of the essence of any agreement?
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> II. Did the lower court err when it declared that the parties entered into a legally binding Marital Settlement Agreement, when the un-impeached and uncontroverted testimony of [Mother] established that a material term, which was the essence of her agreement, was not included in the document propounded by [Father]?

Mother's Brief at 4.

Both of Mother's issues challenge the trial court's finding that the parties reached a binding agreement pursuant to which the Trust funds would be spent for the benefit of the Children. We will review them together.

"A settlement will not be set aside absent a clear showing of fraud, duress or mutual mistake." ***McDonnell v. Ford Motor Co.***, 643 A.2d 1102, 1106 (Pa. Super. 1994), *appeal denied*, 539 Pa. 679, 652 A.2d 1324 (1994). The principles of contract law govern the enforceability of settlement agreements. ***Mastroni-Mucker v. Allstate Ins. Co.***, 976 A.2d 510, 517-18 (Pa. Super. 2009), *appeal denied*, 605 Pa. 715, 991 A.2d 313 (2010). "Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement. This is true even if the terms of the agreement are not yet formalized in writing." ***Id.*** at 518 (citations omitted). Interpretation of a settlement agreement is a question of law, but the parties' intent in forming an agreement is a question

of fact. ***Id.*** at 518. "With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record." ***Id.*** Moreover, "an agreement to settle legal disputes between parties is favored. There is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and expedites the transfer of money into the hands of a complainant." ***Id.*** (citations omitted).

In her brief, Mother sets forth a lengthy backstory of what has been a highly contentious litigation. In a limited legal analysis of the issue in dispute in this appeal, Mother asserts that no meeting of the minds existed as to her authority to consume funds from the Trust. We now turn to a review of pertinent language set forth in the Agreement and the Trusts.

Section 9 of the Agreement, governing child support, provides:

> Contemporaneous with the execution of this Agreement, the parties shall execute the Trust documents, which shall be incorporated herein by reference and attached hereto as Exhibit 'A', and in lieu of making monthly payments of child support, [Father] shall immediately and directly fund the Trust for [the Children] in the aggregate amount of Three Million Five Hundred Thousand ($3,500,000) Dollars, and the net income therefrom, together with sufficient principal when reasonable and necessary, **shall be used and expended for [the Children] for their comfortable maintenance, support and education.**

Settlement Agreement, 9/28/11, at § 9 (emphasis added).

The September 28, 2011 Trust, titled "Hvizdak Children's Trust Agreement" provides in pertinent part as follows:

> WHEREAS, as part of the overall [Agreement] of [Father] and [Mother], which Agreement will be submitted to the Court for approval, [Father] and [Mother] agreed that a trust would be created to satisfy future child support obligations of [Father], which trust will be funded from assets of [Father] and assets from the entities under the direct or indirect control of [Father], **said child support to inure, in part, for the benefit of [Mother] as guardian and custodial parent of [the Children].**

Hvizdak Children's Trust Agreement, 9/28/11, Preamble (emphasis added). Mother relies on the preamble language as support for her argument that the parties agreed she would be entitled to consume Trust funds for her own benefit.

The Trust further provides that "During [Mother's] lifetime, the Trustee [Mother] shall disburse to [Mother] all of the net income of the Trust in quarter-annual or more frequent installments, to be used for the benefit of the Children in [Mother's] sole discretion." ***Id.*** at Article II, ¶ 1. Likewise, the Trust provides that

> [D]uring [Mother's] lifetime, [Mother] shall have the right in each calendar year, on a non-cumulative basis, to withdraw from the principal of the Trust an amount or amounts not exceeding in the aggregate either (a) $5,000; or (b) 3% of the total fair market value of the trust principal valued as of the first business day of the calendar year. [...] The principal withdrawn by [Mother] [...] **shall be**

> **used for the benefit of the Children, in the sole and absolute discretion of [Mother.]**[2]

Id. at Article 2, ¶ 3 (emphasis added).

To summarize the foregoing, the Trust is comprised of two sets of trust documents, one titled "Hvizdak Children's Trust Agreement" and the other titled "Hudson C. Hvizdak Special Needs Trust." Both sets of documents expressly recognize that the goal of their creation is to discharge Father's future child support obligations. Both were drafted in accordance with the Agreement the parties reached on August 22, 2011. Mother argues on appeal that the trial court abused its discretion in failing to find that the Agreement contemplated that Mother would have unfettered discretion to spend income and principal from the Children's Trust, regardless of whether she used any money for the benefit of the Children.

To state Mother's argument is to refute it. As noted above, the parties' intent in entering an agreement is a question of fact, and we are required to defer to the trial court's findings of fact if the evidence supports them. ***Mastroni-Mucker***, 976 A.2d at 518. Likewise, parties can enter a binding agreement prior to the drafting of documents setting forth the terms of the agreement. Pursuant to the Agreement, the parties drafted documents creating two children's trusts. Both sets of documents are

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[2] The parties also executed a special needs trust for the benefit of their son, who suffers from a disability. Mother offers the same arguments with respect to both trusts. That is, she asserts that she is entitled to consume the proceeds for her own benefit.

recognized as children's trusts in their titles. Indeed, the parties chose to tailor one of the trusts to meet the special needs of the parties' son. Mother does not dispute that the trusts were a means for Father to discharge his ongoing duty to support the Children. The record amply supports the trial court's finding that the parties intended the Trust funds to benefit the Children.

Moreover, pertinent language in the Trust documents appears entirely consistent with Mother's argument:

> Although everyone agreed that the intent of the parties was to have the [Trust] provide financial resources to Mother and [the Children] until the youngest child reached the age of 35 years, the trust agreements state that the income and principal was "for the benefit of the [C]hildren." **Although that statement was correct, it was not complete in that the resources were also intended to benefit Mother.**

Mother's Brief at 18 (emphasis added).

The express language of the preamble – that the Trust funds would "inure, in part, to the benefit of [Mother]" –is exactly in accord with Mother's wishes as stated in her brief. ***See*** Hvizdak Children's Trust Agreement, 9/28/11, Preamble. As the Children's caretaker, Mother will obviously benefit, directly and indirectly, from her expenditure of the Trust funds. Nonetheless, Mother goes on to argue:

> [T]he two trust experts retained by the parties to draft the [Trust] language have agreed that the [Trust] language, as it now stands, is ambiguous and subjects Mother to a challenge down the road, which

> could claim that she has no right to consume the trust proceeds for her benefit and that for this reason, Mother should be removed as trustee.

Mother's Brief at 22.

Presently, we have no occasion to assess the opinions of the parties' trust experts. Our only task is to assess the trial court's finding that the parties entered a binding agreement and that the written Trust documents are commensurate with the parties' intent in entering that agreement. The foregoing considerations convince us that the trial court did not err. Nothing in the record evinces the parties' intent to draft Trust documents clothing Mother with unfettered, unreviewable discretion to dissipate Trust assets without regard for the Children's benefit. Yet, unreviewable discretion is precisely what Mother would need in order to foreclose any possibility of future litigation. Thus, Mother's susceptibility to future legal challenges does not undermine the trial court's finding that the Trust documents are consistent with the parties' intent. In the event of a future dispute as to Mother's use of Trust funds, a court will have occasion to engage in legal interpretation of the Trust language and an analysis of Mother's spending decisions.[3] We need not and cannot do so in this appeal.

The only question before us is a factual one concerning the parties' intent. The trial court resolved that question in favor of Father, and we

[3] Mother posits that it is "unlikely" that any future interpretation of the Trust documents would be unfavorable to her. Mother's Brief at 22. We express no opinion on the outcome of any future litigation, but Mother's assertion leads us to question the need for the present appeal.

discern no basis in the record for concluding that the trial court erred. For all of the foregoing reasons, we affirm the trial court's order.

Motion to quash denied. Judgment affirmed.