VERMONT SUPREME COURT
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Case No. 22-AP-006

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

AUGUST TERM, 2022

Paula Schmitt* v. Thomas Schmitt	}	APPEALED FROM:
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	CASE NO. 296-12-19 Wrdm
		Trial Judge: Lisa A. Warren

In the above-entitled cause, the Clerk will enter:

Wife appeals from the trial court's denial of her motion under Vermont Rule of Civil Procedure 60(b) to set aside a final divorce order based on the parties' stipulation. We affirm.

The court found the following. The parties were married in December 1984 and had five children. Husband was the main financial contributor during the marriage, working as a mechanical engineer. Husband worked for General Electric and other companies in the United States and abroad. At the time of the divorce, he resided in Pakistan where he earned between $200,000 to 300,000 annually. Wife was a homemaker and the primary caregiver for the children.

In November 2019, husband learned that wife had reunited with her high school boyfriend and after a discussion the two agreed to get divorced. At the time, wife was living in Vermont. The parties jointly worked on the divorce paperwork at the beginning of December 2019 when husband was home for a few weeks. During this process husband provided wife with information about their financial accounts and their assets, including his retirement and pension accounts.

In December 2019, when the divorce petition was filed, the parties had two bank accounts, husband had an account in Pakistan, and husband had retirement accounts, including a pension with a withdraw value of $196,410.96. The parties were amicable and discussed spousal maintenance. Husband suggested a lump sum of $30,000 in lieu of maintenance. Wife requested $50,000 and husband agreed. The parties filed a stipulation, which indicated they agreed to waive a final hearing, had no minor children, and waived the waiting period. Under the stipulation, wife received the parties' Toyota Tundra, each party kept accounts in their own

name, husband received the parties' joint accounts, husband had to pay wife a one-time payment of $50,000 in lieu of maintenance, and the parties agreed to split the proceeds from the sale of the marital home in Quechee. In addition, husband was required to pay all of the parties' debts. The stipulation also indicated that the parties had disclosed all financial information to one another. The parties amended the standard forms to add sections on wife's hobby shop, the division of their personal property, and their burial plots. They also included language agreeing not to discuss the events that preceded the divorce. The parties spent a family vacation together in December 2019. The divorce became final on December 31, 2019. Wife got engaged in January 2020.

In June 2020, wife filed a motion to vacate pursuant to Rule 60(b)(3), (4), and (6), arguing that the final order was patently unfair and unconscionable given the parties' relative incomes and earning potential. Wife alleged that the circumstances of the negotiations surrounding the agreement were unfair and coercive. She also alleged that the stipulation was flawed because it indicated there were no minor children when in fact one child was not yet an adult and the parties had not been separated for six months. Prior to the final hearing, the court granted husband's requests to bifurcate the hearing by limiting the inquiry to the circumstances surrounding the formation of the divorce stipulation and for a protective order regarding wife's discovery requests. The court explained that the purpose of the hearing was to evaluate the merits of wife's Rule 60 motion not a full divorce hearing. The court held hearings on the motion over four days between February and November 2021.

In a written order, the court denied wife's motion. The court concluded that relief from judgment was not warranted under Rule 60(b)(3) because, notwithstanding that the parties' daughter was a minor when the stipulation was filed, she was no longer a minor when the order became final on December 31, 2019. The court further held that wife could not collaterally attack the final order on the ground that there was no six-month separation. Finally, the court concluded that wife failed to demonstrate that the stipulation was the result of coercion or duress. The court did not find wife's testimony credible and found instead that the stipulation was a product of wife's deliberate choice. The court concluded that although wife could have negotiated more favorable terms, the final stipulation was not an injustice or hardship. Therefore, the court denied wife's Rule 60 motion. Wife appeals.

Vermont law favors agreements between divorcing parties and these agreements "are presumed to be fair, and will be set aside only upon a showing of fraud, unconscionable advantage, impossibility of performance, hampering circumstances beyond the parties' expectations, collusion, or duress." Tudhope v. Riehle, 167 Vt. 174, 177 (1997). Once a settlement has become part of a final divorce order, it may be modified only through a motion to set the judgement aside under Rule 60(b). Id. A Rule 60 motion "is addressed to the discretion of the trial court, and its decision will be upheld unless discretion was withheld or abused." Manosh v. Manosh, 160 Vt. 634, 635 (1993).

On appeal, wife argues that the trial court erred in denying her motion under Rule 60(b) without allowing her to present evidence on the unconscionability of the parties' divorce stipulation. Wife contends that the court refused to admit evidence on the one-sided nature of the parties' settlement. The trial court acted within its discretion in limiting evidence to the year before the parties' settlement. Despite wife's contention otherwise, she was provided a full

opportunity to demonstrate that there was a basis for her motion, including evidence pertaining to the circumstances at the time the settlement was entered, the parties' financial situation at the time, and her view of how the settlement was formed.

Wife next contends that Rule 60 allows a stipulation to be modified where the terms of the agreement are substantively unconscionable and contends that such a circumstance is present here. Wife alleges that the agreement is patently unfair and unconscionable in that after a thirty-five-year marriage, she received a one-time $50,000 maintenance payment and is now unable to support herself. A Rule 60 motion is not a substitute for an appeal or an avenue to "provide relief from an ill-advised tactical decision or from some other free, calculated, and deliberate choice of action." Riehle v. Tudhope, 171 Vt. 626, 627 (2000) (mem.). It is an equitable remedy addressed to the discretion of the trial court. Id. Wife has not demonstrated that the court abused its discretion in this case. The court fully considered wife's arguments regarding the unconscionability of the settlement agreement and was unpersuaded. The court determined that all the circumstances forming the basis of wife's motion were present at the time of the final order and wife offered no explanation for her failure to appeal and her delay in challenging the stipulation. In addition, the court found that wife entered the settlement of her own will as a deliberate choice with full knowledge of the parties' financial situation. The court found that wife negotiated with husband for several items in the settlement agreement. In addition to the one-time payment to wife, the court noted that the settlement required husband to pay the parties' debts, to support their adult children, and to provide financial support for the online hobby shop. It also required the parties to equally divide the net proceeds from the sale of the marital home. Although the court acknowledged that wife may have been able to negotiate a more favorable settlement, the court did not abuse its discretion in concluding that the circumstances here were not the type of extraordinary circumstances warranting relief under Rule 60.

Affirmed.

BY THE COURT:

_____
Karen R. Carroll, Associate Justice

_____
William D. Cohen, Associate Justice

_____
Nancy J. Waples, Associate Justice