IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: JAMES DAVID NESMITH, Respondent, v. MADISON NICOLE NESMITH, Appellant.	No. 40704-3-II UNPUBLISHED OPINION

Van Deren, J. — Madison Nesmith appeals from an order enforcing a CR 2A stipulation into which she had entered as part of the dissolution of her marriage. Finding that the trial court did not err in enforcing the stipulation as to the financial issues, but did err in enforcing it as to the parenting plan, we affirm in part, vacate in part and remand for further proceedings.[1]

On July 13, 2009, James filed a petition for dissolution of his marriage to Madison. On March 11, 2010, James and Madison, both represented by counsel, participated in a settlement conference. Following that conference, the trial court swore in James and Madison in order to make their settlement agreement on the record, as provided for in CR 2A. On the record, James's counsel stated that James and Madison had agreed that: (1) James would be the custodial parent;

[1] A commissioner of this court initially considered Madison's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges. For purposes of clarity, this opinion will refer to the parties by their first names.

(2) Madison would have "local rule visitation;" (3) Madison would have a $5,000 judgment against James, payable after he graduates or within five years of the date of the settlement conference; (4) James would not petition for relocation of the children for at least one year; (5) Madison would pay $100 per month in child support; (6) a Walmart would be the visitation exchange point; (7) James and Madison would split their debts; and (8) Madison would receive certain pieces of furniture and, if James could locate it, a coin collection. Report of Proceedings at 1-2. James and Madison each confirmed that this was their agreement. The court instructed James and Madison to return with dissolution orders for the court to sign.

On March 18, 2010, after having retained new counsel, Madison moved to withdraw her stipulation, asserting that she had been denied proper representation by her prior counsel. Argument on that motion and presentation of the dissolution orders took place on April 9, 2010. Madison's new counsel argued that the CR 2A stipulation should not be enforced because the settlement did not address some issues in the dissolution, specifically an allocation of the community debts, the involvement of CPS, the circumstances under which Madison could petition for a change in the parenting plan, and the division of vacations and holidays for purposes of the children's residence. Madison asserted that her prior counsel had pushed her to settle. James's counsel responded that the CR 2A stipulation should be enforced because both James and Madison had sworn to it on the record. The trial court agreed, ruled the CR 2A stipulation would be enforced, and signed the dissolution orders that James's counsel had prepared.

Madison appeals, arguing that the trial court erred in enforcing the CR 2A stipulation because James did not meet his burden "'to prove there is no genuine dispute regarding the existence and material terms of a settlement agreement.'" *In re Marriage of Langham*, 153

Wn.2d 553, 561, 106 P.3d 212 (2005) (quoting *In re Marriage of Ferree*, 71 Wn. App. 35, 41, 856 P.2d 706 (1993)). She asserts that because there had been no agreement as to the allocation of community debts or the division of vacations and holidays, there was a genuine dispute as to material terms of the settlement, such that the settlement agreement had not been proved.

But in *Langham* and *Ferree*, the parties did not stipulate to their settlement agreement on the record, as James and Madison did. Where parties have entered a stipulation on the record under CR 2A, it is binding on them, and this court will review the resulting judgment only for "fraud, mistake, misunderstanding or lack of jurisdiction." *Baird v. Baird*, 6 Wn. App. 587, 589, 494 P.2d 1387 (1972). Madison does not show that any of these situations was present. Madison and James agreed to "split" their community liabilities, which the dissolution decree does, although it does not further specify how much each will pay. Having not shown fraud, mistake, misunderstanding or lack of jurisdiction, Madison's CR 2A stipulation was binding on her as to the financial issues contained in the decree.

However, the trial court erred in entering the parenting plan based on the CR 2A stipulation. Agreements as to the terms of a parenting plan must follow the requirements of RCW 26.09.070, not CR 2A. *In re Marriage of Grimsley-Lavergne*, 156 Wn. App. 735, 742, 236 P.3d 208 (2010). Madison's and James's settlement agreement does not satisfy the requirements of RCW 26.09.070 and must be vacated.

We affirm the trial court's enforcement of the settlement agreement except as to the parenting plan, which is vacated. We remand for further proceedings as to the parenting plan.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.