2012 IL App (3d) 110821-U

Order filed August 14, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re MARRIAGE OF	)	Appeal from the Circuit Court
KIMBERLY DIANE REDA,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Petitioner-Appellant,	)	
	)	Appeal No. 3-11-0821
and	)	Circuit No. 10-D-848
	)	
DANIEL JAMES REDA,	)	Honorable
	)	Robert J. Baron,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Where petitioner testified that she agreed to the terms of the settlement agreement and the agreement was not unconscionable, the settlement was binding on the court and the trial court properly accepted it.
(2) Where counsel's motion to withdraw on the eve of final judgment would have caused unnecessary delay to petitioner's detriment, the trial court did not err in denying it.

¶ 2 Kimberly Diane Reda petitioned for dissolution of marriage. After hearing evidence of an oral settlement agreement, the circuit court entered judgment of dissolution, which

incorporated the terms of the agreement. On appeal, Kimberly argues that (1) the settlement agreement should have been rejected because it was unconscionable, and (2) the trial court erred in denying counsel's motion to withdraw after Kimberly terminated his services. We affirm.

¶ 3 Kimberly and respondent, Daniel James Reda, were married on June 23, 2000. They had two children: Ayden, born December 30, 1999, and Daniel, born April 27, 2001. Kimberly filed a petition for dissolution of marriage in April of 2010.

¶ 4 According to the parties' financial affidavits, Daniel is the fire captain for Tinley Park and a full-time director and officer of Local 150 Operators Union. He reported a gross monthly income of $12,212.16 and listed monthly expenses of $6,955.62. Kimberly suffers from multiple sclerosis and is disabled. She is unemployed and receives a social security disability payment of $701 per month. Kimberly's fixed monthly expenses total $7,025.

¶ 5 After a year of negotiations, both parties served notices to take depositions. The depositions were scheduled for August 3, 2011 at the office of Attorney Paul Frigo, Daniel's counsel. The parties and their attorneys met at that time and engaged in extensive settlement discussions. No depositions were taken. As a result of the discussions, Kimberly and Daniel agreed to settle the case. The parties agreed that the verbal agreement would be reduced to writing and presented to the Court at a prove-up hearing scheduled for August 11, 2011.

¶ 6 On August 11, 2011, Kimberly advised her attorney, Joseph Olszowka, Jr., that she no longer agreed with the terms discussed by the parties during the settlement conference on August 3 and that she wished to have the matter set for trial. As a result, Olszowka filed an emergency motion to continue trial, along with a motion to withdraw as counsel.

¶ 7 At the hearing on the motions, the following discussion occurred:

"Mr. Olszowka: Judge, what we have is a verbal agreement that we discussed with both parties, reduced it to writing, and now my client says no way.

The Court: Well, [Attorney Frigo is] telling me it's part of a deposition.

Mr. Frigo: It is. It was on the record, your Honor.

Mr. Olszowka: We didn't depose the parties. We took down their verbal agreement–

The Court: Okay.

Mr. Olszowka: –on the record which we did do, Judge, that's correct.

The Court: Okay. That's fine. Well, we have then–why haven't we got a contract to settle?

Mr. Olszowka: Because my client indicated to me she didn't understand what it is that she was agreeing to, and when she saw it in writing that it did not reflect her understanding of what the agreement was.

The Court: Now don't I have to make that decision whether that's true or not.

Mr. Olszowka: Yes, you do."

¶ 8 Th e trial court took a brief recess. Shortly thereafter, both parties returned to the courtroom with counsel. Kimberly's attorney withdrew his motion to continue and his motion to withdraw. He then informed the court that the parties had reached an agreement on all issues and were ready to proceed to prove-up.

¶ 9 On direct examination, Kimberly stated that she and Daniel had reached a complete agreement on all the issues in the case. Specifically, she testified that both parties agreed to execute a joint parenting agreement, that they would share joint legal custody, and that the

children would primarily reside with her. She also agreed that she and Daniel had reached a complete agreement regarding all financial issues. Daniel agreed to pay $2,188 per month in child support. He also agreed to pay maintenance in the amount of $1,900 per month for 84 months. Kimberly would receive maintenance and child support payments, reduced by the mortgage payment amount, until the marital house sold. Once the house sold, Daniel was obligated to pay the total amount of child support and maintenance of $4,088 per month. Daniel also agreed to maintain major medical insurance for the children until they attained the age of 23. All other medical and dental expenses would be shared equally. As to the marital property, the parties agreed to share the proceeds of the sale of the marital home 50/50. Kimberly would also receive 50% of the marital portion of Daniel pension and IRA funds and his deferred compensation plan. Both parties received the car they drove. Daniel agreed to pay the balance due of $3,700 on the credit card in Kimberly's name, and each party agreed to be responsible for any other debts or obligations that existed in his or her own name. Kimberly also testified that she agreed to be responsible for her own attorney fees.

¶ 10 Daniel's testimony was similar. He was asked if he agreed to the terms of the settlement as set forth in Kimberly's testimony, and he agreed that those were the terms the parties negotiated and agreed to on August 3.

¶ 11 Based on Kimberly and Daniel's testimony, the trial court found that the settlement agreement was fair and reasonable and voluntarily made by both parties. The court approved the agreement and continued the matter for entry of judgment.

¶ 12 Two weeks later, Kimberly's attorney filed a motion to withdraw as counsel, stating

that irreconcilable differences had arisen between counsel and Kimberly and that he was unable to properly represent her in the divorce case. In her *pro se* response, Kimberly claimed that counsel was using the motion to withdraw as a vehicle to force her to sign the settlement agreement.

¶ 13 At the hearing on the motion, Kimberly argued that she was under duress on August 11 when she agreed to the terms of the settlement agreement on the record. She claimed that Daniel was physically and mentally abusive for ten years and that she agreed to the settlement to avoid a confrontation with him. The trial court denied Olszowka's motion to withdraw.

¶ 14 On October 7, 2011, the trial court entered a judgment of dissolution, incorporating the marital settlement agreement and the joint parenting agreement.

¶ 15 I

¶ 16 Kimberly argues that the trial court erred in accepting the oral settlement agreement because (1) the agreement was unconscionable, and (2) counsel did not have the authority to settle.

¶ 17 Modification of a divorce decree rests in the sound discretion of the trial court and courts of review will not disturb its finding unless it is against the manifest weight of the evidence. *In re Marriage of Riedy*, 130 Ill. App. 3d 311 (1985). Section 502 of the Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/502 (West 2010)) is generally intended to encourage parties to reach an amicable settlement of their rights. When a party seeks to vacate a settlement incorporated into a judgment of dissolution, all presumptions are in favor of the validity of the settlement. *In re Marriage of Black*, 133 Ill. App. 3d 59 (1985).

¶ 18 The terms of a settlement agreement, except as they pertain to children, are binding on the court unless the agreement is found to be unconscionable. 750 ILCS 5/502(d) (West 2010); *Riedy*, 130 Ill. App. 3d at 317. Unconscionable means that one party did not have a meaningful choice and the contract terms are unreasonably favorable to the other party. *In re Marriage of Gorman*, 284 Ill. App. 3d 171 (1996). An agreement merely favoring one party over another, does not render the agreement unconscionable. *Gorman*, 284 Ill. App. 3d at 181. "A court should not set aside a settlement agreement merely because one party has second thoughts." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214 (1994). To determine unconscionability in a divorce settlement, a court must consider two factors: (1) the conditions under which the agreement was made; and (2) the economic circumstances of the parties resulting from the agreement. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243 (2002). To rise to the level of being unconscionable, the settlement agreement must be "improvident, totally one-sided or oppressive." *Gorman*, 284 Ill. App. 3d at 182.

¶ 19 Here, the conditions under which the agreement was made do not rise to the level of unconscionability as plaintiff suggests. The record reveals that after more than a year of negotiations, Kimberly freely and voluntarily entered into the terms of the settlement agreement. While we sympathize with Kimberly's belief that Daniel is oppressive, we note that nothing in the record suggests a coercive atmosphere. Kimberly did not object to the agreement during the lengthy prove-up hearing before the court. Moreover, she was represented by competent counsel, had discussed the settlement terms well in advance of the prove-up and was not cross-examined by Daniel's attorney during the settlement hearing. The evidence does not indicate that Kimberly was upset or coerced into accepting the terms

of the agreement.

¶ 20 In addition, the economic circumstances of the parties resulting from the agreement are equitable. The terms of the settlement agreement indicate that Kimberly received monthly maintenance payments of $1,900 for seven years and $2,188 per month in child support. She received the vehicle she was driving, as did Daniel. Daniel was ordered to continue to pay the mortgage on the marital home until it was sold, at which time the proceeds from the sale would be divided equally. Kimberly was also awarded 50% of the marital portion of Daniel's pension and IRA funds, and Daniel was ordered to pay Kimberly's credit card debt. Thus, on its face, the agreement is not "totally one-sided" in Daniel's favor. Based on this record, the trial court made the appropriate finding that the agreement was fair and equitable. Since the agreement showed no evidence of unconscionability due to an unreasonable economic favoring of Daniel, the agreement was binding on the court.

¶ 21 Further, considering all the facts, Kimberly's claim that her attorney was not authorized to accept the agreement is not substantiated. Kimberly is correct that an attorney must receive a client's express authorization to settle a lawsuit. See *Brewer v. National R.R. Passenger Corp.*, 165 Ill. 2d 100 (1995). However, in this case, the trial court was not required to reject the settlement based on lack of authority. The record shows that at the time Kimberly agreed to the settlement, she had an ongoing attorney-client relationship with counsel. She attended the settlement meeting in Daniel's attorney's office on August 3, 2011, and participated in settlement discussion. Moreover, she did not object to any terms of the agreement as presented to the court at the prove-up hearing. Where the contents of an agreement are testified to and the objecting party fails to object or give evidence to the

contrary, the agreement is established. See *In re Marriage of Kloster*, 127 Ill. App. 3d 583 (1984). Here, counsel was authorized to negotiate the agreement, Kimberly voluntarily accepted the terms of the agreement, and the trial court properly accepted it.

¶ 22 II

¶ 23 Kimberly also argues that the trial court erred in denying her attorney's motion to withdraw as counsel.

¶ 24 A trial court's ruling on a motion to withdraw will not be overturned on appeal absent an abuse of discretion. *People ex rel. Burris v. Maraviglia*, 264 Ill. App. 3d 392 (1993). A motion to withdraw as counsel is governed by Supreme Court Rule 13(c)(3), which provides:

> "(3) *Motion to Withdraw*. The motion for leave to withdraw shall be in writing and, unless another attorney is substituted shall state the last known address of the party represented. The motion may be denied by the court if the granting of it would delay the trial of the case, or would otherwise be inequitable." Ill. S. Ct. R. 13(c)(3) (eff. July 1, 1982).

Illinois courts have determined that the language of Rule 13(c)(3) gives courts the option of denying an attorney's motion to withdraw *only* if granting the motion would improperly delay the trial or would otherwise be inequitable. *Ali v. Jones*, 239 Ill. App. 3d 844 (1993).

¶ 25 Here, the trial court denied counsel's motion because it was brought after the court had accepted the settlement and on the eve of the formal hearing at which the written decree was to be entered. Granting the motion to withdraw at that point would have denied Kimberly competent representation and would have delayed entry of the dissolution judgment to her detriment. Thus, under the law set forth in Supreme Court Rule 13(c)(3),

the trial court did not abuse its discretion in denying counsel's motion to withdraw.

¶ 26 The judgment of the circuit court of Will County is affirmed.

¶ 27 Affirmed.