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2013 IL App (3d) 130019-U

Order filed November 13, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
CHARLES E. TRAINOR, JR.,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellant,)	
)	Appeal No. 3-13-0019
and)	Circuit No. 11-D-2303
)	
MELISSA TRAINOR,)	Honorable
)	Robert J. Baron,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Wright and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted the wife's motion to vacate the property settlement agreement.
- ¶ 2 On February 29, 2012, the trial court entered a judgment dissolving the marriage between petitioner, Charles E. Trainor, and respondent, Melissa Trainor. The judgment incorporated a marital settlement agreement that provided for the disposition of the parties' property. On September 4, 2012, Melissa filed a motion pursuant to section 2-1401 of the Code of Civil

Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) to vacate the judgment for dissolution of marriage. The trial court granted the motion. Charles appeals, arguing that the trial court erred because: (1) Melissa failed to meet the due diligence requirement of section 2-1401; (2) the settlement agreement was not unconscionable; and (3) the court failed to conduct a full evidentiary hearing before finding the settlement agreement unconscionable. We affirm.

¶ 3

FACTS

¶ 4 On November 30, 2011, Charles filed a petition for dissolution of his 17-year marriage to Melissa. On February 29, 2012, the parties executed a marital settlement agreement. On the same day, the matter proceeded to a prove-up hearing. Charles was represented by his attorney, and Melissa appeared *pro se*.

¶ 5 Charles testified that irreconcilable differences caused the irretrievable breakdown of his marriage with Melissa. As a result of the marriage, the parties had two children. The parties' settlement agreement awarded sole custody of the children to Charles. Charles would maintain medical insurance for the children, but the parties reserved the determination of child support. Charles and Melissa waived their right to maintenance, and each party would keep their own retirement accounts. Melissa would maintain her own health insurance. Joint bank accounts would be divided evenly among both parties, and each party would keep accounts that were in their own name. Charles would be liable for any and all joint credit card debts.

¶ 6 Melissa was awarded a 1999 GMC Sierra. Charles was awarded a 2001 Honda Accord, a 2009 GMC Yukon, and a 1963 Chevy Nova. Charles was also awarded the marital residence, but would pay Melissa a lump sum of \$10,000 as a buyout for the house. The agreement also stated that the parties waived formal discovery.

¶ 7 In response to questioning by the court, Charles stated that he earned \$65,000 a year. Melissa stated that she earned \$25,000. The court then asked if the parties had any other assets other than the marital home. Charles' attorney informed the court that "the only other assets they have is some retirement plans, your Honor, that don't amount to too much, to be honest with you, in regards to that." The court then asked Melissa if she would be able to sustain herself on \$25,000 a year. Melissa replied yes. The court explained that Charles could request child support from her in the future. Melissa stated that she understood.

¶ 8 Melissa testified that Charles' counsel did not give her any legal advice regarding this case, but did advise her that she had the right to get an attorney. Melissa testified that she did not want to get an attorney and stated that the agreement was fair and equitable. Melissa stated that she had consulted an attorney before she signed the agreement. The attorney advised Melissa on what to do, and that the agreement was what she wanted.

¶ 9 The court questioned Melissa about her job and determined that Melissa had only been working as a receptionist since 2010. The court noted there was a significant disparity of income between the parties and recommended that the parties discuss reserving maintenance for Melissa. Following a recess, the parties agreed to modify the agreement to allow Melissa to seek maintenance within a period of two years. The trial court entered a judgment for dissolution of marriage, which incorporated the parties' marital settlement agreement.

¶ 10 On May 8, 2012, Melissa retained counsel. On the same day, Melissa filed a section 2-1401 (735 ILCS 5/2-1401 (West 2012)) motion to vacate the judgment for dissolution of marriage based, in part, on a misrepresentation by Charles of his retirement accounts. On August 14, 2012, the trial court dismissed Melissa's motion without prejudice so that she could

provide exact values of Charles' retirement assets.

¶ 11 On September 4, 2012, Melissa filed an amended motion to vacate. Melissa alleged that had the court known additional facts concerning the agreement, the court would have found the settlement agreement unconscionable. Namely, Melissa argued that the agreement awarded the parties their respective retirement plans, but failed to identify the value of these plans. Melissa alleged that Charles' pension plan was worth \$13,913 per year upon Charles' retirement and his 401(k) plan was worth over \$20,000. Contrary to this evidence, at the prove-up hearing, Charles' attorney misled the court when he stated that the retirement plans "don't amount to too much."

¶ 12 Charles filed a response to Melissa's motion, arguing that his attorney had not misled the court. Charles stated that no discovery was completed by either party, and that his attorney was not aware of the value of his pension plan. Although Charles' attorney knew the value of Charles' 401(k) plan, he did not intend to mislead the court. Instead, Charles' attorney informed the court that the retirement account did not amount to much because Charles was taking on \$20,000 in marital credit card debt, which was equal to the value of Charles' 401(k) plan. This was supported by an affidavit signed by Charles' attorney. Charles further argued that Melissa had every opportunity to find the true value of the plans, but failed to do so. Charles further argued that the agreement was not unconscionable, noting that Melissa received \$10,000, a \$20,000 car, her retirement plan, and no obligation to pay any joint credit card debt or child support.

¶ 13 On October 22, 2012, the trial court held a hearing on Melissa's amended motion. The court stated that the only issue in the motion that he found to have merit was the misrepresentation about the retirement assets. The court explained that Charles' counsel's

statement that the retirement accounts did not amount to much had a great deal of influence on the court's decision to approve the agreement. The court went on to state that if it had known Charles had a pension plan worth \$20,000, it would not have approved the agreement. Charles' attorney reaffirmed the information in his affidavit. The court accepted counsel's statement as a fair representation. The court then granted Melissa's motion and vacated the property settlement portion of the parties' judgment for dissolution of marriage.

¶ 14 Charles filed a motion to reconsider the trial court's ruling, arguing that Melissa should not have been granted relief because she chose not to conduct discovery. Additionally, Charles claimed the court should have held an evidentiary hearing so that he would have been given the opportunity to contest the facts of Melissa's motion. The court explained that it vacated the judgment because had it known the value of Charles' retirement accounts, it would not have approved the agreement as conscionable. The court denied Charles' motion. Charles appeals.

¶ 15 ANALYSIS

¶ 16 Charles argues that the trial court erred by granting Melissa's section 2-1401 motion because: (1) Melissa failed to meet the due diligence requirement of section 2-1401; (2) the settlement agreement was not unconscionable; and (3) the court should have held a full evidentiary hearing before finding the settlement agreement unconscionable.

¶ 17 Section 2-1401 of the Code allows for vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2012). To obtain relief under section 2-1401, a petitioner must affirmatively set forth specific factual allegations supporting: (1) the existence of a meritorious defense or claim to the judgment; (2) due diligence in presenting the defense or claim to the trial court in the original action; and (3) due diligence in filing the petition. *In re Marriage of*

Roepenack, 2012 IL App (3d) 110198. The purpose of a section 2-1401 petition for relief from judgment is to bring facts to the attention of the court which, if known at the time of judgment, would have prevented its entry. *Id.* The power to set aside a judgment under section 2-1401 is based upon substantial principles of right and wrong and is to be exercised for the prevention of injury and for the furtherance of justice. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85 (2006). The decision to grant a section 2-1401 petition where no evidentiary hearing was held is reviewed *de novo*. *People v. Vincent*, 226 Ill. 2d 1 (2007); *Mills v. McDuffa*, 393 Ill. App. 3d 940 (2009).

¶ 18

I. Due Diligence

¶ 19 Charles first argues that Melissa did not satisfy the requirement of due diligence in presenting her claim to the trial court in the original action because she did not conduct basic discovery of Charles' assets prior to the judgment.

¶ 20 No bright-line rule exists for judging whether a petitioner has acted diligently. *Paul*, 223 Ill. 2d 85. Rather, courts look to the reasonableness of the parties' conduct under all of the circumstances. *Id.* Additionally, the requirement of due diligence need not be rigidly enforced when fraud or unconscionable behavior is shown. *In re Marriage of Armstrong*, 255 Ill. App. 3d 844 (1993).

¶ 21 In arguing that Melissa did not exercise due diligence, Charles relies on *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, and *In re Marriage of Broday*, 256 Ill. App. 3d 699 (1993), for support. In *Goldsmith*, the wife filed a motion to vacate the judgment because she discovered that her husband concealed several assets in the settlement agreement. The trial court and appellate court found the wife's motion insufficient because she failed to raise a meritorious

claim over the allegedly undisclosed assets. Despite finding the wife's motion deficient on this point, the court went on to address the wife's diligence. The appellate court found that the wife failed to exercise diligence when she elected to accept her husband's representation and warranty of full disclosure over the opportunity to engage in formal discovery.

¶ 22 In *Broday*, the trial court vacated a property settlement agreement where, subsequent to the judgment, the wife discovered that the husband did not fully disclose all of his assets in the settlement agreement and asserted the agreement was procured by fraud. In reversing the trial court's order, the appellate court held that the wife failed to prove the husband's intent to deceive in order to allege fraudulent concealment. The court further held that the wife could not claim detrimental reliance on these misrepresentations because she could have discovered the allegedly concealed assets through her own investigation or by hiring an attorney.

¶ 23 We find both of these cases distinguishable. Unlike *Goldsmith* and *Broday*, where the husband allegedly failed to disclose certain assets in the settlement agreement, Charles, through his attorney, misrepresented the true value of his retirement accounts when questioned by the court. See *Roepenack*, 2012 IL App (3d) 110198 (finding adequate diligence by the wife where she had insufficient funds to hire an attorney and was misled by her husband into believing his businesses were of little to no value). Despite the claim that Charles' attorney did not intentionally mislead the court, counsel's misrepresentations led the court and Melissa to believe Charles' retirement accounts were worth very little. The court relied on this representation in finding the parties' agreement conscionable. Therefore, in light of the misrepresentation regarding Charles' retirement assets, we hold that despite the parties' waiver of formal discovery, any lack of diligence by Melissa was excusable under the totality of the circumstances in this

case. See *Paul*, 223 Ill. 2d 85.

¶ 24 II. Unconscionability

¶ 25 Charles next argues that Melissa failed to establish that the settlement agreement was unconscionable.

¶ 26 Section 502(b) of the Illinois Marriage and Dissolution of Marriage Act provides that the terms of a settlement agreement which relate to the disposition of property are binding upon the court unless they are found to be unconscionable. 750 ILCS 5/502(b) (West 2012).

Additionally, section 2-1401 relief is appropriate where a settlement agreement is unconscionable or was entered into because of duress, coercion, or fraud. *Roepenack*, 2012 IL App (3d) 110198.

In determining whether a settlement agreement is unconscionable, the court must consider: (1) the conditions under which the agreement was made; and (2) the economic circumstances of the parties that result from the agreement. *Id.* Unconscionability encompasses an absence of meaningful choice on the part of one of the parties and contract terms which are unreasonably favorable to the other party. *Id.*

¶ 27 Here, the record reveals that at the prove-up hearing, Charles was represented by counsel and Melissa proceeded *pro se*. In addition, Charles had a substantially higher income than Melissa. A review of the terms of the settlement agreement indicates that following the parties' 17-year marriage, Melissa received \$10,000, a vehicle, and some personal property. In turn, Charles received the marital home, three vehicles, and sole custody of the two children. Maintenance for Melissa and child support for Charles was reserved. Additionally, each party was to receive their own retirement accounts, but the value of these accounts was not revealed.

¶ 28 When the court specifically inquired about the parties' assets, Charles' attorney informed

the court that the parties had retirement accounts, but they did not amount to much. It was later determined that Charles' attorney misrepresented the value of Charles' retirement accounts. At the hearing on Melissa's motion to vacate, it was revealed that Melissa had a 401(k) plan worth approximately \$750, while Charles had a pension plan worth approximately \$13,000 a year upon Charles' retirement and a 401(k) plan worth approximately \$20,000.

¶ 29 Although the trial court found that Charles' attorney did not intend to mislead the court regarding the retirement assets, the court explicitly stated that had it known the true value of Charles' retirement accounts, it would not have approved the settlement agreement as conscionable. Charles' attorney's explanation—that the 401(k) plan had little value because it was offset by the \$20,000 joint credit card debt Charles had assumed—was not revealed to the court until Melissa filed her motion to vacate. Additionally, Charles' attorney knew his statement about the retirement accounts was inaccurate because he admitted not knowing the value of Charles' pension plan when he informed the court that Charles' retirement assets were minimal. As such, counsel's misrepresentation of a significant marital asset led the court to believe it knew the true value of Charles' retirement assets when the settlement agreement was approved, thereby inducing the court and Melissa into thinking they had made an informed decision. Under these circumstances, we find that the trial court properly found the parties' agreement unconscionable. See *Roepenack*, 2012 IL App (3d) 110198 (finding agreement unconscionable where husband received the majority of the assets and failed to disclose marital and personal assets); cf. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243 (2002) (finding agreement conscionable where the court and wife were fully aware of the value of husband's pension when wife waived her property interest in it).

¶ 30

III. Evidentiary Hearing

¶ 31 Lastly, Charles argues that because he challenged the underlying facts of Melissa's motion, the court should have held a full evidentiary hearing before finding the settlement agreement unconscionable. See *Smith v. Airoom, Inc.*, 114 Ill. 2d 209 (1986) (stating that where the sufficiency of the facts to support the grant of relief under section 2-1401 is challenged by the opposing party, a full and fair evidentiary hearing must be held).

¶ 32 At the hearing on Melissa's motion to vacate, the parties argued their motions in relation to the alleged misrepresentation made by Charles' attorney regarding the retirement accounts. Melissa's attorney offered unchallenged testimony to establish the true value of the parties' retirement accounts. In response, Charles' attorney explained that he did not intentionally mislead the court and reaffirmed the statements made in his affidavit. The trial court did not hold an evidentiary hearing, and neither party requested one at the time the motions were argued.

¶ 33 The trial court decided Melissa's motion to vacate based on the parties' motions and the representations made by counsel. Charles now claims that the court should have held an evidentiary hearing to establish the assets each party received in the settlement in order to provide a clear picture of the economic circumstances of the parties. These assets, however, were not disputed by Charles at the hearing. Thus, we hold that the trial court properly granted Melissa's motion to vacate without an evidentiary hearing. See *In re Marriage of Chapman*, 162 Ill. App. 3d 308 (1987) (finding that the trial court properly refused to grant an evidentiary hearing where the party's motion sufficiently informed the court of the necessary information it would need to rule on the motion to vacate). Accordingly, we find the trial court properly granted Melissa's motion to vacate pursuant to section 2-1401.

¶ 34

CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 36 Affirmed.