2014 IL App (2d) 130838-U
No. 2-13-0838
Order filed May 5, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Marriage of,	)	Appeal from the Circuit Court
	)	of Winnebago County.
CHRISTOPHER J. COOLING,	)	
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 03-D-1073
	)	
SUSAN W. COOLING,	)	Honorable
	)	Joseph J. Bruce,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly determined that an agreed order regarding financial matters filed 4½ years prior to the judgment of dissolution was not temporary and was not unconscionable.

¶ 2 Petitioner, Christopher J. Cooling (Chris) appeals from the trial court's orders denying his petitions for revocation and/or modification of an agreed order regarding property distribution, judgment of dissolution, and motions to vacate and reconsider. Chris contends that the agreed order should have been revoked or modified to reflect the value of the property at the time of the judgment of dissolution because the agreed order was unconscionable. We disagree and affirm.

¶ 1 I. BACKGROUND

¶ 2 The parties, Chris and Susan (Sue) Cooling, were married in 1977 in Illinois. Despite Sue's discovery requests, Chris failed to disclose that he had entered into an agreement for the sale of real estate in excess of $17 million. Soon after Sue learned about the pending sale, she filed a petition for temporary relief seeking to enjoin Chris from the sale, transfer or otherwise disposing of any assets in which he was involved, which the trial court granted on April 27, 2006. On the same date, Sue filed petitions for a rule to show cause, for a contempt finding and for sanctions alleging that Chris had willfully and contumaciously committed a fraud upon the court and Sue by lying and failing to disclose the property sales agreement. On June 5, 2007, Sue filed a counter-petition for dissolution of marriage and a petition for temporary relief seeking financial relief. The trial court set Sue's petition for status on June 21, 2007. By agreement of the parties, the petition was taken off the court's call and, on June 28, an agreed order was entered by the trial court. The agreed order addressed, *inter alia*, waiver of maintenance and the division of property.

¶ 3 On September 23, 2011, Sue filed a notice setting the case for entry of judgment of dissolution of marriage. On January 5, 2012, Chris filed a petition for revocation and/or modification of the agreed order. On January 31, 2013, the trial court denied Chris's petition for modification and/revocation, entered judgment for dissolution of marriage and incorporated the agreed order into the judgment. On February 25, 2013, Chris filed a motion to reconsider, modify and/or vacate the judgment of dissolution. The trial court denied the motion on July 16, 2013. Chris filed his timely notice of appeal on August 15, 2013.

¶ 4 II. ANALYSIS

¶ 5 Chris argues that the agreed order was a temporary order and, thus, was subject to revocation or modification pursuant to section 501(d) of the Illinois Marriage and Dissolution of

Marriage Act (Act) (750 ILCS 5/501(d) (West 2014)). An "agreed order" is not a judicial determination of the parties' rights; it is a recitation of an agreement between the parties and is subject to the rules of contract interpretation. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. When construing a contract, the primary objective is to give effect to the intent of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). The plain and ordinary meaning of the language of the contract is the best indication of the intent of the parties. *Id*. at 233. The interpretation of a contract is a question of law that we review *de novo*. *Hartz Construction Co., Inc. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 27.

¶ 6 In this case, the agreed order provided that:

> "The amount due to [Sue] by [Chris] under the terms of this Order, including but not limited to the payment of three million dollars ($3,000,000), is in the nature of a property settlement agreement and in consideration for (Sue's) waiver of the right to receive maintenance from [Chris]."

The agreed order further provided,

> "23. The intention is that the terms of this Agreed Order shall constitute a complete adjustment of the property rights and all other rights of the parties in relation to their marital relationship.
>
> 24. This Order shall not be modified by any Court hereafter unless the parties agree to such modification in writing.
>
> * * *
>
> 26. The terms of this Agreed Order shall not be set forth in any subsequent judgment, but shall be incorporated by reference. In addition, this Agreed Order shall not merge into the Judgment, but shall have independent legal viability as a contract, and shall be enforceable either as a contract or as an Order."

The language of the above sections of the agreed order indicates that it was final, not temporary, regarding the parties' property and maintenance rights. The agreed order states that it is "a complete adjustment of the [parties'] property rights," and that it could not be modified by a court unless the parties agreed in writing. Further, nothing in the order indicates that it is temporary. Thus, the trial court properly determined that the agreed order represented the final agreement between the parties regarding property.

¶ 7 Chris supports his argument with a docket sheet entry noted on the date the agreed order was entered. The sheet states, "CT ENTERS AGREED ORDER ON TEMP RELIEF. SEE ORDER. FILED." Because the trial court's written agreed order conflicts with the word "TEMP" contained in the docket entry, the written agreed order entered by the trial court controls. See *First National Bank of Sullivan v. Bernius*, 127 Ill. App. 3d 193, 196 (1984).

¶ 8 Chris argues that the language introducing the Agreed Order indicates that it is a temporary order. We disagree. The paragraph provides:

> "THIS MATTER coming before the Court on [Sue's] Petition For Temporary Relief, counsel for both parties, and the Court having been informed that the parties have reached an Agreement on the Petition, the Court FINDS and ORDERS as follows: ***."

Nothing in this introductory paragraph indicates that the parties agreed that the agreement that follows was temporary. A court may not add to a contract terms that the parties have not expressly included. *Tutor*, 2011 IL App (2d) 100187, ¶ 13. The language cited by Chris is merely introductory language and is not part of the parties' agreement.

¶ 9 Chris also argues that the trial court erred by valuing the marital property as of the date of the temporary order rather than the date of entry of the judgment of dissolution of marriage. Chris cites *In re Mathis*, 2012 IL 113496, ¶ 30 (holding that the date of dissolution is the proper date for the trial court to value marital property in a bifurcated dissolution proceeding). Contrary

to the facts in *Mathis*, Chris and Sue, rather than the trial court, determined the value of the marital property to be entered as an agreed order. Such agreements are encouraged by our legislature and are binding on the court. See 750 ILCS 5/502(a) (West 2014)). Thus, *Mathis* is clearly distinguishable from this case.

¶ 10 Chris also argues that, because the agreed order was not a final and appealable order, it is subject to revocation or modification pursuant to section 501(d) of the Act (750 ILCS 5/501(d) (West 2014)). However, Chris fails to recognize that he is bound by the agreed order even though it was not final and appealable. Section 502(a) of the Act, provides that, to promote amicable settlement of disputes between parties upon the dissolution of their marriage, the parties may enter into an agreement "containing provisions for disposition of any property owned by either of them." See 750 ILCS 5/502(a) (West 2014)). The terms of the agreement are binding upon the court unless it determines that the agreement is unconscionable. 750 ILCS 5/502(b) (West 2014)). To determine whether an agreement is unconscionable, the court must consider the parties' economic circumstances at the time of, or immediately following, the making of the agreement, but not at the time of the hearing. *In re Marriage of Nilles*, 2011 IL App (2d) 100528, ¶ 13. In this case, Chris alleged that the agreed order was unconscionable because there was a substantial decrease in property value since the agreed order was entered more than 4½ years earlier. The trial court determined that the agreement was not unconscionable because Chris did not allege "that circumstances existing at the time of or immediately following the entry of the Agreed Order render[ed] it unconscionable." Because Chris's economic condition 4½ years after the agreement cannot be said to be his economic conditions at the time of or immediately following the agreement, the trial court could properly determine that the agreement was not unconscionable. See *id*. ¶ 14.

¶ 11 In addition, Chris argues that it is reversible error for the court to accept the parties' agreed upon valuation if it is entirely inaccurate based upon the evidence presented. Chris cites *In re Marriage of Wojcik*, 362 Ill. App. 3d 144 (2005) to support his argument. In *Wojcik*, the trial court based its valuation of the husband's retirement account on the parties' stipulated valuation made more than two months before trial. *Id*. at 150, 152. This court held that the trial court's finding was against the manifest weight of the evidence because, at trial, both parties testified that the husband's retirement account was more than $20,000 higher than the stipulated amount. *Id*. at 152. Contrary to *Wojcik*, in this case, the parties determined the value of the property at issue pursuant to their agreement that was entered by the trial court as an agreed order. Further, the parties agreed that the agreed order could not be modified by "any Court." Thus, unlike the court in *Wojcik*, the trial court here was not charged with making a factual finding regarding the value of the property at issue. Thus, *Wojcik* is inapposite.

¶ 12 Chris also cites *In re Marriage of Hall*, 404 Ill. App. 3d 160 (2010), to support his argument. In *Hall*, this court held that the omission of two of the former husband's pension accounts from the marital settlement agreement did not reflect the parties' intent for the former wife to receive half of "each" of the former husband's accounts. *Id*. at 166. Nothing in this case indicates that Chris or Sue omitted something from the agreed order that fails to reflect the parties' intent. Contrary to Chris's argument, nothing in the parties' agreed order indicates the parties' intent to revalue the property at a later date and divide it accordingly if the property decreases in value. Accordingly, *Hall* is distinguishable. Because Chris has failed to sustain his burden on review, we affirm the trial court's denial of Chris's petition.

¶ 13 III. CONCLUSION

¶ 14 The judgment of the circuit court of Winnebago County is affirmed.

¶ 15 Affirmed.