2015 IL App (4th) 150062-U

NO. 4-15-0062

FILED
June 22, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
NOLA MARIANNE SILA, a/k/a NOLA MARIANNE	)	Circuit Court of
ISRAEL,	)	McLean County
Petitioner-Appellee,	)	No. 14D22
and	)	
KARL JOHN SILA,	)	Honorable
Respondent-Appellant.	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, concluding that the trial court (1) did not abuse its discretion by denying respondent a continuance to obtain substitute counsel, (2) did not err by finding that respondent was not under duress during dissolution negotiations, and (3) properly rejected respondent's claim that an automatic stay applied to the parties' joint-parenting agreement.

¶ 2 In September 2014, the trial court dissolved the marriage of petitioner, Nola Marianne Sila, a/k/a Nola Marianne Israel, and respondent, Karl John Sila, which incorporated the parties' martial-settlement agreement (MSA) and joint-parenting agreement (JPA) (collectively, the agreements).

¶ 3 In October 2014, Karl *pro se* filed (1) a motion to vacate the agreements, arguing that those documents were "product[s] of duress" and (2) an amended motion for reconsideration, essentially arguing that the trial court's denial of his motion to continue the dissolution proceedings to obtain substitute counsel—which he filed on the day of trial—prejudiced him. In

December 2014, Karl *pro se* filed an emergency petition for relief, alleging that because he had filed motions challenging the "documents" of the court's September 2014 dissolution order, their enforcement was automatically stayed under section 2-1203(b) of the Code of Civil Procedure (735 ILCS 5/2-1203(b) (West 2012)). The court later denied all three of Karl's filings.

¶ 4 Karl appeals, arguing that the trial court (1) abused its discretion by denying his request for a continuance to obtain substitute counsel and (2) erred by denying his (a) motion to vacate and (b) emergency petition for relief. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In April 2005, Nola and Karl married. During their union, the parties had two children, W.S. (born April 11, 2006) and M.S. (born October 26, 2009). In January 2014, Nola filed a petition for dissolution of marriage, citing irreconcilable differences.

¶ 7 At a May 2014 status hearing, the parties informed the trial court that child custody and visitation issues remained unresolved. At a June 2014 status hearing, the parties reported that except for child custody, they had reached an agreement on most of the ancillary issues. The court then scheduled a (1) September 2, 2014, final pretrial hearing and (2) two-day trial on the dissolution petition, to be held the following week. During the final pretrial hearing, the parties confirmed that the remaining unresolved ancillary issues had "narrowed significantly." Relying on this representation, the court reduced the time it had originally allotted for trial on the dissolution petition to one day.

¶ 8 On September 4, 2014—two days after the final pretrial hearing—Karl e-mailed his counsel, claiming that counsel "dropped the ball" by not identifying "unilateral changes" Nola had made to the agreements. The next day, Karl e-mailed the following message to his counsel: "Please let me know when my file/materials will be ready for pick-up, and send me a final

bill." On September 8, 2014, Karl e-mailed two unknown third parties, stating that "[a]fter what seemed to be bad advice turned into outright bullying, I've decided to change lawyers."

¶ 9 On September 10, 2014—the day of trial on the dissolution petition—Karl's counsel filed a motion to withdraw and requested a continuance so that Karl could obtain substitute counsel. The trial court took a short recess and retired to chambers with the parties' respective attorneys. Upon reconvening, the court denied both motions "based upon the reluctance to allow the parties to control the [c]ourt's calendar when the matter had been set for trial since June 2014." The court then informed the parties that it would continue the matter for an additional 30 minutes for further negotiations but admonished the parties that if they could not reach a settlement, the trial on Nola's dissolution petition would begin. The court informed Karl that if the matter proceeded to trial, his counsel would be available to him.

¶ 10 Sometime thereafter, the parties informed the trial court that they had resolved their differences. The court inquired whether the agreements the parties signed and proffered represented their voluntary agreement to a fair and equitable settlement. After the parties so affirmed, the court reviewed the agreements and found them to be fair, equitable, and in the best interest of their children. That same day, September 10, 2014, the court entered a judgment of dissolution of marriage, which incorporated the agreements.

¶ 11 On October 10, 2014, Karl *pro se* filed a motion to vacate the agreements, arguing that the documents were "not *** a reflection of an agreement but were instead, product[s] of duress." Karl also filed a motion for reconsideration—which he amended later that month—essentially arguing that the trial court's denial of his motion to continue the dissolution proceedings to obtain substitute counsel prejudiced him in that he "would not have otherwise entered [into] the settlement which he now seeks to be vacated."

¶ 12 On December 12, 2014, Karl *pro se* filed an emergency petition for relief, alleging that because he had filed motions challenging the "documents" of the trial court's September 2014 dissolution order, their enforcement was automatically stayed under section 2-1203(b) of the Code. Karl posited further that because the purported automatic stay was already in effect, he intended to revert back to the parenting schedule that the parties had in place prior to September 2014. In his prayer for relief, Karl sought a court order stating that enforcement of the September 2014 dissolution order was stayed pending resolution of his outstanding motions.

¶ 13 On December 15, 2014, the trial court entered the following docket entry:

> "[The] Emergency Petition for relief does not present a valid emergency. The assertions of law made in the said petition are not necessarily accurate and actions predicated thereon are made at [Karl's] peril. Cause remains for hearing on all pending issues, time permitting on [December 22, 2014.]"

¶ 14 At the December 22, 2014, hearing, the trial court entered an agreed order of withdrawal, dismissing Karl's counsel from the case. The court then confirmed that the pending issues before the court concerned Karl's (1) motion to vacate and (2) amended motion for reconsideration. The court noted that it would also consider Nola's petition for emergency visitation, which she filed that day.

¶ 15 With regard to his *pro se* motions, Karl recounted the trial court's September 10, 2014, denial of his motion for a continuance and the effect that decision had, as follows:

> "I had several disputes with [counsel] when I asked him about the possibility of alternate counsel. [Counsel] made no mention of a continuance, no mention of the procedures on how to ob-

tain alternate counsel. [Counsel] simply stated, 'You go to court by yourself.'

In light of that, I was hesitant to fire him but eventually determined that if I could get a continuance for better counsel, then that would be good. Except for that, I could do no worse *pro se* than I could with him as counsel. As such, I discharged him.

* * *

The [c]ourt subsequently denied the motion for a continuance, which I understand is at the [c]ourt's discretion, but I was subsequently not allowed to present any evidence, not allowed to have my son present his thoughts on the matter. And this is counter to several precedents as cited in the motion the reconsider. I was so taken aback that I had to work with what I *** considered [Nola's] second attorney and the fact that the judge was largely absent. [My counsel] said repeatedly, 'Sign what they give you, or the judge will give you the absolute possible worst finding he can.'

In light of that being stated repeatedly in a raised voice, in [an] angry tone, and the fact that all of the preparation I had done *** *pro se*, if it became necessary, was being ignored by the [c]ourt, I was in no position to sign anything, thus my statement of duress and request for reconsideration."

In support of his motions, Karl proffered two e-mails that he had sent to unknown third parties in which he claimed his counsel was "bullying" him.

¶ 16 In addressing Karl's claim, the trial court stated as follows:

> "If [the court] allowed the withdrawal, [the court] would have consented to cede control of *** the *** children's best interest by delaying that which the law of Illinois mandates be handled in an expeditious fashion, that the termination of custody and visitation disputes, an issue which had been reported to the [c]ourt as early as May as unresolved and in need of resolution. So here the [c]ourt is four months later being told 'Well, you have to allow my attorney to leave so that I can get another delay of the trial other than the delays that have already occurred.
>
> [T]he [c]ourt *** assessed the matter as follows[: ']Motion to withdraw is denied as parties' apparent attempt to control the [c]ourt's calendar.[' The court's] recollection is that the parties stood down from that circumstance and went off and decided whether or not to try the case or to settle it. And the parties presented an agreement. They acknowledged to [the court] that it was their agreement, that it was their voluntary agreement, that it was their knowledgeable agreement.
>
> And for one of the parties to say now that 'I had buyer's remorse by the time I got home; I feel forced' is subjectively something that the [c]ourt can empathize with but not accept as a matter of objective, factual character."

The court summarized further that although the record in this case showed that a "contentious

relationship" existed between Karl and his counsel, it was not an "intimidating relationship or duress-oriented relationship." Thereafter, the court denied Karl's motions.

¶ 17 Immediately thereafter, the trial court considered Nola's petition for emergency visitation, during which the following exchange occurred:

> "[THE COURT]: Okay. With regard to the petition for emergency visitation, [the court] think[s] most of the issues raised by that have now been resolved by reference to the [c]ourt's denying the motion to vacate as well as the amended motion to reconsider.
>
> Is there some concern otherwise?
>
> [NOLA'S COUNSEL]: Well, yes, Your Honor. [Nola] lost two days with the children as a result of [Karl's] unilateral action to not follow the [c]ourt's order."

¶ 18 In response, the trial court characterized Karl's actions as an "unintentional deprivation of two days' visitation" based on his misinterpretation of the law regarding stays of court judgments. The court ordered the parties to make up the difference within two months.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Substitution of Counsel

¶ 22 Karl argues that the trial court abused its discretion by denying his request for a continuance to obtain substitute counsel. We disagree.

¶ 23 "We 'recognize the established right of a party to discharge his attorney at any time with or without cause, and to substitute other counsel, for a client is entitled to be represent-

ed by an attorney in whose ability and fidelity he has confidence.' " *Sullivan v. Eichmann*, 213 Ill. 2d 82, 90, 820 N.E.2d 449, 453 (2004) (quoting *Savich v. Savich*, 12 Ill. 2d 454, 457-58, 147 N.E.2d 85, 87 (1957)). However, that established right is not absolute. *Id*. at 91, 820 N.E.2d at 453. A trial court may deny such a request if the " 'substitution of counsel would unduly prejudice the other party or interfere with the administration of justice.' " *Id*. (quoting *Filko v. Filko*, 127 Ill. App. 2d 10, 17, 262 N.E.2d 88, 92 (1970)). A trial court may also consider whether the denial of a request for substitution of counsel will result in detriment to the moving party. *Id*., 820 N.E.2d at 454. Absent an abuse of discretion, this court will not reverse the trial court's decision to deny substitution of counsel. *Id*.

¶ 24 In support of his argument, Karl contends that he was "significantly" prejudiced by the trial court's refusal to continue the proceedings so that he could obtain substitute counsel. Specifically, Karl asserts that given negotiations between the parties had "broken down," he would have been forced to proceed to trial *pro se* and unprepared because his counsel "failed to present anything for pretrial." Karl posits further that he would have had to also overcome the court's "propensity to erroneously assign speculative ulterior motives" to his actions. We do not agree with Karl's characterization.

¶ 25 In this case, the record shows that on May 7, 2014, almost four months following the filing of Nola's petition for dissolution of marriage, the parties informed the trial court that child custody and visitation issues remained unresolved. The following month, the parties told the court that except for child custody, they had reached an agreement on "most" of the ancillary issues. At the September 2014 final pretrial hearing—approximately one week prior to trial—the parties announced that the unresolved ancillary issues had "narrowed significantly." The aforementioned representations the parties made to the trial court belie Karl's claim to this court that

negotiations were at an impasse and that his counsel's performance was inadequate. Indeed, the record shows that the parties were making steady progress toward resolving their differences regarding custody and visitation with their children.

¶ 26 Even if this court were to accept Karl's account, which we do not, he fails to provide an explanation why he did not discharge his counsel and seek substitute representation during the almost-four-month period between the May 7, 2014, status hearing and the September 2, 2014, final pretrial hearing. Instead, Karl discharged his counsel five days before the September 2014 trial date, which the trial court had scheduled in June 2014. In support of that dismissal, Karl cites self-serving e-mails in which he claimed to third parties that in addition to his counsel's bad advice, he felt bullied. We also note that Karl failed to provide any credible evidence that he sought to acquire substitute counsel during the five-day period immediately following the dismissal of his counsel.

¶ 27 The primary reason stated by the trial court for denying any further delays in the parties' dissolution proceedings was the court's astute assessment that to do so would unduly prejudice the parties the court was mandated to protect by ensuring their best interests were addressed in an expeditious manner—that is, the parties' children. See *In re A.W.J.*, 197 Ill. 2d 492, 497-98, 758 N.E.2d 800, 803-04 (2001) ("Like proceedings under the Adoption Act (750 ILCS 50/[0.0]1 [to 24 (West 2012))] and the Juvenile Court Act of 1987 (705 ILCS 405/2-1 [to 2-34 (West 2012))], custody proceedings under the [Illinois] Marriage and Dissolution of Marriage Act [(Marriage Act) (750 ILCS 5/601 to 611 (West 2012))] are guided by the overriding lodestar of the best interests of the child or children involved."). We note that Karl does not contest this finding. Instead, Karl essentially urges this court to conclude that on this record, no reasonable person would have denied his motion for a continuance to obtain substitute counsel. See *In re*

Marriage of Schneider, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005) ("A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court."). We decline to do so.

¶ 28 B. The Parties' Agreements

¶ 29 Karl argues that the trial court erred by denying his motion to vacate. Specifically, Karl contends that the court clearly erred by finding that he was not under duress during the September 10, 2014, negotiation. We disagree.

¶ 30 In dissolution proceedings, "the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children." 750 ILCS 5/502(a) (West 2012). "A settlement agreement can be set aside if it is shown that the agreement was procured through coercion, duress or fraud, or if the agreement is unconscionable." *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 180, 671 N.E.2d 819, 825 (1996). Duress is defined as the imposition, oppression, undue influence, or taking undue advantage of the stress of another by depriving that person the exercise of his free will. *In re Marriage of Akbani*, 2014 IL App (5th) 130266, ¶ 22, 16 N.E.3d 399. A person successfully raises a claim of duress if he proves by clear and convincing evidence that he was bereft of the quality of mind essential to the making of a contract. *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 41, 983 N.E.2d 104. "We review a trial court's finding of duress under a manifest weight of the evidence standard." *Id*. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record or the finding is arbitrary, unreasonable, or not based on the evidence." *In re Marriage of Brown*, 2015 IL App (5th) 140062, ¶ 59.

¶ 31 In substantiating his claim of duress, Karl again directs this court's attention to his

self-serving e-mails in which he claimed that counsel dropped the ball by not noticing unilateral changes made to the parties' agreements, provided bad advice, and bullied him. Karl also claims that he experienced duress because the trial court "forced the parties into negotiations," whereupon he was "disadvantaged, prejudiced, and rendered unable to meaningfully pursue his interest by having been stripped of access to trusted counsel."

¶ 32 In *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 31, 980 N.E.2d 261, the respondent argued that he was entitled to avoid a settlement agreement, asserting that from the outset, the trial court used aggressive language to put pressure on the parties to agree to what respondent characterized was a hastily contrived settlement. In rejecting that argument, the appellate court stated, as follows:

> "In the instant case, the parties negotiated at arm's length with the aid of counsel. The record contains numerous statements by [respondent] which demonstrate that the agreement was acceptable to him, that he wanted to proceed with the settlement, and that he knew he had the alternative of proceeding to trial. His statements affirming the agreement and his failure to object to the terms of the agreement when they were recited to the trial court at the hearing clearly evidence that he freely agreed to the settlement. [Respondent] failed to prove by clear and convincing evidence that the oral agreement was coerced." *Id*. ¶ 36, 980 N.E.2d 261.

¶ 33 Although Nola claims that *Heller* appropriately applies, Karl attempts to distinguish that case by asserting that he (1) was "not afforded trusted counsel," (2) "gave no verbal affirmation of the settlement," and (3) "was restrained by [his dismissed counsel] from listing the

ways the documents presented were contrary to statutory guidelines regarding such matters." We are not persuaded.

¶ 34 In this case, the record shows that the trial court did not force the parties to negotiate but, instead, continued the dissolution proceedings for 30 minutes to allow the parties time to negotiate an equitable settlement, if possible. According to Karl, the parties negotiated for approximately two hours and, thereafter, informed the court that they had reached a settlement. When the court inquired about the proposed settlement, the parties affirmed that the negotiated, signed, and proffered documents represented their voluntary agreement to a fair and equitable settlement. After reviewing the settlement, the court agreed. At no time during that hearing did Karl inform the trial court that the agreements were "products of duress," as he now claims to this court. Thus, we conclude that Karl has failed to provide clear and convincing evidence showing that he was under duress during the September 2014 negotiations.

¶ 35 C. Emergency Relief

¶ 36 Karl argues that the trial court erred by denying his emergency petition for relief. We disagree.

¶ 37 Because Karl's argument is premised on section 2-1203(b) of the Code, we first provide that statutory provision, as follows:

> "(b) Except as provided in subsection (a) of Section 413 of the *** Marriage Act, a motion filed in apt time stays enforcement of the judgment except that a judgment granting injunctive or declaratory relief shall be stayed only by a court order that follows a separate application that sets forth just cause for staying the enforcement." 735 ILCS 5/2-1203(b) (West 2012).

¶ 38 Section 413(a) of the Marriage Act provides, as follows:

> "(a) A judgment of dissolution of marriage or of legal separation or of declaration of invalidity of marriage is final when entered, subject to the right of appeal. An appeal from the judgment of dissolution of marriage that does not challenge the finding as to grounds does not delay the finality of that provision of the judgment which dissolves the marriage, beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order requiring maintenance or support of a spouse or a minor child or children entered under this Act or any other law of this State shall not be suspended or the enforcement thereof stayed pending the filing and resolution of post-judgment motions or an appeal." 750 ILCS 5/413(a) (West 2012).

¶ 39 Prior to addressing Karl's argument, we quote the following portions of his December 2014 emergency petition for relief to further clarify his contention:

> "2. That [Karl] filed both a timely motion to vacate and a timely motion to reconsider in [this case] on [October 10, 2014], subsequently amended on [October 31, 2014];
>
> 3. That *** 735 ILCS 5/2-1203(b) [(West 2012)] clearly states that enforcement of any order where such timely motions are [filed] is automatically stayed pending resolution of such a motion;
>
> 4. That the exceptions to *** 735 ILCS 5/2-1203(b) [(West 2012)] listed under 750 ILCS 5/413(a) [(West 2012)] refer to the

actual dissolution of the marriage and to support and maintenance payments and are thus irrelevant to this motion;

5. That [Karl] has requested a hearing on the above motions and is on the court's docket for [December 22, 2014];

6. That with enforcement of the documents of September 10[], 2014[,] statutorily stayed, [Karl], as a fit parent, is free to follow the informal parenting schedule that had been successfully in place for several months prior to that date[.]"

¶ 40 Essentially, Karl contends that the moment he timely filed his October 10, 2014, motion to vacate and motion for reconsideration, an automatic stay applied to the JPA pursuant to section 2-1203(b) of the Code. The flaw in Karl's logic is that he assumes the JPA is a separate and distinct agreement. If this were the case, the terms of such an agreement would be enforced under contract law. See *In re Marriage of Coulter*, 2012 IL 113474, ¶ 17, 976 N.E.2d 337 ("A JPA that is not expressly incorporated in the judgment, but is merely identified and approved, must be enforced as a contract.").

¶ 41 In this case, however, the trial court incorporated the provisions of the JPA (as well as the MSA) into its September 2014 judgment of dissolution of marriage. Specifically, the court's dissolution order stated that "all of the provisions of the said agreements are expressly ratified, confirmed, approved[,] and adopted as the orders of this court to the same extent and with the same force and effect as if said provisions were in this paragraph set forth verbatim as a judgment of this court."

¶ 42 By incorporating the JPA into the judgment of dissolution, the trial court accepted the parties' proposal and made it an enforceable order of the court. See *Id.* ¶ 33, 976 N.E.2d 337

("[T]he parties' JPA was incorporated into the judgment of dissolution and was thereafter enforceable as an order of the court."). As such, the court's dissolution order, which included the JPA, was governed by Illinois Supreme Court Rule 305(b) (eff. July 1, 2004), which provides, in pertinent part, as follows:

> "(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders. Except in cases provided for in paragraph (e) of this rule, on notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order."

(Illinois Supreme Court Rule 305(e) (eff. July 1, 2004) pertains to automatic stays in cases terminating parental rights, which is not at issue in this appeal.)

¶ 43 We conclude that the trial court properly determined that Karl relied erroneously on section 2-1203(b) of the Code and, as a consequence, he assumed incorrectly that an automatic stay permitted him to disregard the trial court's dissolution order instead of filing a motion to stay enforcement of a portion of that order—specifically, the JPA—in accordance with Rule 305(b). Therefore, we reject his argument to the contrary.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.