2016 IL App (1st) 152466-U

SIXTH DIVISION
April 29, 2016

No. 1-15-2466

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF LINDA MACCRACKEN, Petitioner-Appellee, and JAMES CHAMPLIN, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 13 D 836 Honorable Nancy J. Katz, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** In this divorce case, the husband sought to enforce a clawback provision in a marital settlement agreement, alleging that his former wife failed to disclose her work-related severance package before their marriage was dissolved. The circuit court denied the husband's request for relief. We affirm.

¶ 2 This appeal involves an action to enforce the terms of a clawback provision in a marital settlement agreement (MSA). Petitioner Linda MacCracken and respondent James Champlin entered into an MSA, which was incorporated into a divorce judgment. Champlin filed a post-

judgment "motion" to compel division of an undisclosed asset[1] (petition), claiming MacCracken failed to disclose a severance package totaling $186,000, in excess of the $10,000 threshold amount for a division of the asset under the clawback provision of the MSA. MacCracken filed a combined motion to dismiss the petition pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). The circuit court granted MacCracken's motion to dismiss the petition, finding that she adequately disclosed her severance package, and that the severance pay was a stream of income rather than an undisclosed asset subject to the MSA's clawback provision. We affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 MacCracken and Champlin were married in 1987 and have two children, one of whom is emancipated. On January 30, 2013, MacCracken filed for dissolution of marriage. Throughout the divorce proceedings, the parties conducted discovery until the matter was resolved through mediation.

¶ 5 During the course of mediation, each party disclosed to the other that his/her respective employment was in jeopardy. On July 18, 2014, counsel for the parties exchanged emails reflecting a negotiation of terms to be included in the pending MSA if either party lost his/her job. The email chain contained an attachment showing Moody's Investors Service had downgraded the rating of MacCracken's employer, Truven Health Analytics, Inc. (Truven).

[1] Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2014)) are used in response to pleadings such as complaints, which set forth a party's "cause of action, counterclaim, defense, or reply." They are not properly used to respond to a mere motion. Although Champlin's pleading was entitled "motion to compel division of undisclosed asset," it was the functional equivalent of a standard post-dissolution petition. Our supreme court has determined that "the character of [a] pleading is determined from its content, not its label." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (citing *Barnes v. Southern Ry. Co.*, 116 Ill. 2d 236 (1987)). For clarity, we will hereinafter refer to Champlin's pleading as a "petition."

¶ 6 On September 4, 2014, Truven sent MacCracken a separation agreement and general release. The agreement confirmed MacCracken's termination from Truven effective September 20, 2014. The agreement stated that MacCracken would continue to work for Truven as an independent contractor and receive her base salary for 52 weeks from the termination date, provided that she did not violate her obligations under the agreement. MacCracken executed the agreement on September 25, 2014, but had 7 days to reconsider and revoke her acceptance. She did not revoke her acceptance of the agreement.

¶ 7 The parties executed the MSA on October 1, 2014. Article II(E)(1) of the MSA provides:

> "The parties represent and warrant that they have fully disclosed all income, property business interests and assets through the date of prove-up, that each party has an interest in, either directly or derivatively and this agreement is being entered into premised upon the representation of each party that they have no other property, income, asset or other interest that has not been disclosed and which is not part and parcel of this marital settlement agreement. The balance sheet attached hereto as Exhibit A represents all property and assets that either party has an interest in whether marital or non-martial and whether the property is in the name of the party, a corporation, a partnership or other entity in which they have an interest, or is held by another party for their benefit. Both parties will submit 2013 and 2014 taxes to attorneys for confirmation of income, assets and resources when filed."

The parties also acknowledged that they were each "conversant with the wealth, estate, property, and income and interests of the other, and that each has been fully informed of his and her respective rights" to assets and income. The MSA stated that each party had the opportunity to

secure counsel and "undertake investigation with reference to the subject matter of this Agreement." In addition, the parties agreed that discovery had been completed to their satisfaction based upon representations made in writing during mediation.

¶ 8 Article V of the MSA set forth the division of marital property. In section (A)(2)(b), the parties agreed to allocate their finances and real property (their non-retirement assets) by dividing them 55% to MacCracken and 45% to Champlin. Section (A)(7) contained a clawback provision for undisclosed property, which stated:

> "If it is determined that a party had any undisclosed assets, with a value in excess of $10,000.00 (or a total of several assets that collectively equals in excess of $10,000.00) or any interest in real property not previously disclosed said property remains subject to division. To the extent any party fails to disclose any property or assets, the other party shall be awarded the percentage they would have been awarded had the property been disclosed (i.e. 55/45 of non-retirement accounts and 52/48 of retirement accounts) of the undisclosed property or assets. Further the party who failed to disclose the asset shall be required to pay all of the attorney's fees and costs incurred in relation to discovering and seeking an award of the undisclosed property."

The parties also agreed to waive maintenance.

¶ 9 On November 25, 2014, the circuit court conducted a hearing to prove up the MSA. MacCracken testified during her direct examination as follows:

> "Q. You're currently 59 years of age. You've recently been terminated from your employment, but you got a severance package; is that correct?
>
> A. Yes.

Q. And you're confident that, in spite of the waivers of maintenance in here, that given the property division and your abilities, that you'll be able to support yourself; is that correct?

A. Yes.

Q. Jim is 55 years of age, and he likewise has been -- recently lost his job and has a severance package, correct?

A. Yes."

During the cross-examination that followed, Champlin's counsel never questioned MacCracken regarding her termination from employment, or regarding her severance package.

¶ 10 After the prove-up hearing, the circuit court ordered a judgment for dissolution of marriage, incorporating the MSA into the judgment. The court found the terms of the MSA were fair, reasonable, and not unconscionable.

¶ 11 On March 15, 2015, Champlin filed his petition. He argued that MacCracken failed to disclose her severance package which had a value in excess of $186,000. According to Champlin, "[t]he first and only time Linda or her attorney mentioned a 'severance package' in any communication with Jim or his attorney was in the middle of the final prove-up hearing on November 25, 2014," and that MacCracken failed to disclose the value of the severance package in violation of the clawback provision in the MSA. Champlin sought $84,119.26 (45% of MacCracken's base salary from the severance package), 45% of whatever bonus amount Truven paid MacCracken in 2015, and attorney fees.

¶ 12 MacCracken moved to dismiss Champlin's petition under sections 2-615 and 2-619(a)(4) and (9) of the Code. 735 ILCS 5/2-619.1 (West 2014). She argued under section 2-615 that she disclosed her termination from employment at the prove-up hearing and that Champlin failed to

exercise due diligence in investigating her severance payments prior to the entry of the judgment for dissolution. MacCracken also contended that, under section 2-619(a)(4), Champlin's pleading was barred by *res judicata* because the judgment for dissolution determined both matters decided in the original action and those matters which could have been decided therein. Finally, MacCracken argued that the severance payment was not an asset, but contingent income, requiring dismissal under section 2-619(a)(9). She also claimed her right to receive severance payments did not vest until after the parties executed the MSA, was discretionary, and was a mere expectancy.

¶ 13 On August 10, 2015, the circuit court heard oral argument regarding MacCracken's combined motion to dismiss. The court noted that MacCracken disclosed during the prove-up hearing that she had been terminated from her employment and had received a severance package. The court asked Champlin's counsel, "[w]hat did you think severance package meant?" Champlin's counsel replied, "I thought it meant the same thing Jim had. He was laid off just prior to the proveup. He got two weeks pay. It was under the $10,000 threshold. He was not required to share that. *** This is $186,000 and she knew about it for two months." MacCracken argued that she seasonably supplemented discovery as necessary and did not disclose the amount of the severance package because she "was receiving the exact same pay from the exact same source under both [Cook County Local Rule] 13.3 and under [Illinois Supreme Court Rule] 214."[2]

[2] Cook County Local Rule 13.3.1 (eff. Jun. 1, 2011) states that in all prejudgment proceedings in which a party is seeking division of the marital estate, each party is required to serve a completed disclosure statement of incomes, expenses, and assets upon the other party. Under Supreme Court Rule 214, parties have a duty to seasonably supplement prior answers or responses to discovery whenever new or additional evidence or information becomes known to the party. Ill. S. Ct. R. 214 (eff. July 1, 2014).

¶ 14 The circuit court found that MacCracken complied with the MSA's duty to disclose. The court stated that "any additional discovery which might have been necessary was up to the husband to inquire or to seek at that point and time. He knew there was a severance package." The court also noted that if MacCracken had received the severance package as a lump sum, "we would be in a different situation," but "what she has is a stream of income." The court found that because the severance package was a stream of income, it did not violate the clawback provision of the MSA. The court granted MacCracken's motion to dismiss. This appeal followed.

¶ 15 ANALYSIS

¶ 16 Standard of Review

¶ 17 A post-dissolution petition initiates a new proceeding and effectively is a new pleading even though it does not present a new cause of action in the dissolution case. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1016 (2011); *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 741 (2007). "To survive a motion to dismiss pursuant to section 2-615, a complaint must be both legally and factually sufficient." *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 167 (2003). "Illinois is a fact-pleading jurisdiction." *Id.* (citing *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 426-27 (1981)). Although both sections 2-603(c) and 2-612(b) of the Code (735 ILCS 5/2-603(c), 2-612(b) (West 2014)) mandate the liberal construction of pleadings, these provisions do not authorize mere notice pleading. *Knox*, 88 Ill. 2d at 426-27. Conclusions of fact are insufficient to state a cause of action regardless of whether they generally inform the defendant of the nature of the claim against him. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 519-20 (1989). Rather, under required Illinois fact pleading

standards a party must set out ultimate facts that support his cause of action. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981).

¶ 18 In contrast, section 2-619 provides for involuntary dismissal based upon certain defects or defenses, and if the grounds for dismissal are not apparent on the face of the pleading, "the motion shall be supported by affidavit." 735 ILCS 5/2-619 (West 2014). Section 2-619(a)(9) of the Code permits involuntary dismissal of a claim where the claim is barred by other affirmative matters defeating or avoiding the legal effect of the claim. 735 ILCS 5/2-619(a)(9) (West 2014); *Edelman, Combs & Latturner*, 338 Ill. App. 3d at 164.

¶ 19 Section 2-619.1 of the Code permits a party to combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2-619.1 (West 2014); *Edelman, Combs & Latturner*, 338 Ill. App. 3d at 164. When ruling on a motion to dismiss under either section 2-615 or section 2-619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Id.* As a result, a motion to dismiss pursuant to either section should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (section 2-615); *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8 (section 2-619).

¶ 20 Furthermore, it is well established that exhibits attached to a complaint become a part of a complaint, and if there is any conflict between the factual matters in the exhibits and those alleged in the complaint, the factual matters in the exhibit control. *Charles Hester Enterprises, Inc. v. Illinois Founders Insurance Co.*, 114 Ill. 2d 278, 287 (1986) ("Where an exhibit is the instrument being sued upon, it controls over the facts alleged in the complaint" (citing *Fowley v.*

Braden, 4 Ill. 2d 355, 359-60 (1954))). We review a trial court's decision on motions to dismiss brought under both sections 2-615 and 2-619 *de novo*. *Carr v. Koch*, 2012 IL 113414, ¶ 27. Finally, this court reviews the judgment, not the reasoning, of the circuit court, and we may affirm on any grounds in the record, regardless of whether the circuit court relied on those grounds or whether its reasoning was correct. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995).

¶ 21 Interpretation of the MSA

¶ 22 Champlin initially argues that the circuit court dismissed his petition by improperly treating it as a petition to vacate a final judgment brought under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)) and applying standards applicable to section 2-1401 petitions to it. In its ruling, the court made no mention of section 2-1401. During argument, the court asked Champlin about the decision in *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, which involved a section 2-1401 petition, but the court did not specifically rule on Champlin's petition based on section 2-1401. As we noted above, Champlin's "motion" was more in the nature of a standard post-judgment petition to enforce the MSA and we will treat it as such. However, the distinction is not crucial, as the ultimate result is the same under either standard. In the end, since our review is *de novo*, and we can affirm on any basis in the record, how the trial court characterized the petition is irrelevant.

¶ 23 A court's jurisdiction in a dissolution proceeding is limited to that conferred by statute. *In re Marriage of Milliken*, 199 Ill. App. 3d 813, 817 (1990); see also *In re Marriage of Henry*, 156 Ill. 2d 541, 549 (noting that issues of dissolution are purely statutory). The entry of a final order in a dissolution proceeding "becomes a final and conclusive adjudication after the passage of 30 days from its rendition." *Milliken*, 199 Ill. App. 3d at 817. The court, however, retains

indefinite jurisdiction to enforce its orders relating to the dissolution of marriage. *Waggoner v. Waggoner*, 78 Ill. 2d 50, 53 (1979); *Hendry*, 409 Ill. App. 3d at 1016. A petition seeks to enforce the terms of a judgment of dissolution if it requests a determination of the parties' rights and obligations with respect to the terms, as opposed to the imposition of new or different obligations on the parties. *Waggoner*, 78 Ill. 2d at 53-54; *In re Marriage of Hall*, 404 Ill. App. 3d 160, 165 (2010) (involving enforcement of the parties' rights and obligations under an MSA).

¶ 24 Here, Champlin sought to enforce the clawback provision in the MSA. The terms of a marital settlement agreement are binding on the parties and the courts. *Blum v. Koster*, 235 Ill. 2d 21, 32 (2009). Marital settlement agreements are contracts and, therefore, the rules governing the interpretation of contracts apply. See *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 300 (2005). "The primary goal of contract interpretation is to give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms." *Joyce v. DLA Piper Rudnick Gray Cary LLP*, 382 Ill. App. 3d 632, 636-37 (2008). "As a general rule, the parties' intentions are determined from their final agreement." *Kehoe v. Commonwealth Edison Co.*, 296 Ill. App. 3d 584, 590 (1998). Illinois follows the "four corners rule for contract interpretation in that, " '[a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used.' " *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999) (quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962)). "If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence." *Id.* "The interpretation of a martial settlement agreement is reviewed *de novo* as a question of law." *Blum*, 235 Ill. 2d at 33.

¶ 25 The clear and unambiguous clawback provision states a party must disclose assets with a value in excess of $10,000. The provision sets forth the resulting division of undisclosed assets in the event the clawback provision is triggered. Champlin attached an exhibit to his petition which was an excerpt from the transcript of the prove-up hearing in which MacCracken testified that she had been terminated from her employment and that she had received a severance package. Exhibits attached to a complaint become part of a complaint, and if there is any conflict between the factual matters in the exhibits and those alleged in the complaint, the factual matters in the exhibit control. *Charles Hester Enterprises*, 114 Ill. 2d at 287.

¶ 26 The question in this case is whether MacCracken disclosed her severance agreement prior to the entry of judgment and, therefore, the clawback provision applied.. The transcript from the hearing shows that she did so. We find that the MSA forecloses Champlin's argument regarding the circuit court's dismissal of the petition as a matter of law under section 2-615.

¶ 27 This result is hardly unjust. The parties negotiated and bargained for the terms of the MSA, had access to counsel, and conducted formal discovery throughout the divorce proceedings to determine the value of their assets. MacCracken disclosed during the prove-up hearing that she received a severance package. Champlin inexplicably chose not to question MacCracken regarding the value of that severance package. One simple question during MacCracken's cross-examination regarding the value of the severance package could have resolved this matter prior to the entry of judgment.

¶ 28 The circuit court properly granted MacCracken's motion to dismiss the petition. Based on this finding, we need not address Champlin's argument that MacCracken's interest in the severance package was an asset vested at the time of entry of judgment.

¶ 29 CONCLUSION

¶ 30 We affirm the judgment of the circuit court.

¶ 31 Affirmed.