2017 IL App (1st) 153486-U

FIRST DIVISION
August 21, 2017

No. 1-15-3486

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| LUCY GRECO, | ) Appeal from the Circuit Court of Cook |
| | ) County, Domestic Relations Division |
| Petitioner-Appellant, | ) |
| | ) |
| v. | ) No. 14 L 50758 |
| | ) |
| FRANK GRECO, | ) Honorable Jeanne Cleveland Bernstein, |
| | ) Judge Presiding |
| Respondent-Appellee. | ) |

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JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err when holding that the parties entered into a valid settlement agreement. The record does not support petitioner's claim of duress.

¶ 2 Petitioner Lucy Franco filed a petition for dissolution of marriage to the Respondent Frank Greco. After engaging in a pretrial conference, the parties entered into an oral settlement agreement. Petitioner attempted to repudiate the agreement. The circuit court granted respondent's motion to enforce the parties' settlement agreement, and entered a judgment for dissolution of marriage. On appeal, petitioner argues that: (1) there was no evidence to support

the court's determination that the parties entered into a valid oral agreement; (2) the lack of a written agreement between the parties is evidence that that the parties did not settle the case; and (3) petitioner was under duress when she entered into the oral settlement agreement. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On October 24, 2013, after 25 years of marriage, petitioner filed a petition for dissolution of marriage from respondent. Between March 13, 2014 and April 1, 2015, the parties engaged in discovery and motion practice, none of which are relevant to the disposition of this appeal.

¶ 5 On April 22, 2015, the attorneys for both parties met with the circuit court in chambers to conduct a pretrial conference. During the pretrial conference, the circuit court offered recommendations regarding the material and outstanding terms of the dissolution of marriage proceedings between the parties. The record does not include a transcript or a bystander's report for that date. At the conclusion of the pretrial conference, counsel for each party consulted with their respective clients. The parties reached an agreement in accord with the trial court's recommendations. Respondent's attorney read aloud the terms of the agreement. The court recorded the material terms electronically in her notes and asked the parties whether they understood and consented to those terms. Both petitioner and respondent, after being sworn in, consented. The court asked the parties whether they acquiesced to those terms being memorialized in a judgment or final order, and the parties agreed. The court then entered an order striking the previously scheduled trial dates and set the matter for prove-up on May 1, 2015.

¶ 6 On April 29, 2015, respondent's counsel sent petitioner a proposed judgment which incorporated the terms of the oral settlement agreement for her to sign. Subsequently, the court

granted petitioner's attorney leave to withdraw and continued the matter for prove-up to May 15, 2015. The case was again continued to June 8, 2015. Petitioner filed a *pro-se* motion for temporary and permanent maintenance and child support, and later retained new counsel to represent her in the proceedings.

¶ 7 Petitioner refused to sign the proposed judgment containing the terms reached by the parties on April 22, 2015, and respondent moved to enforce it. In her response, petitioner denied that the parties had reached a settlement agreement claiming that she did not understand the terms of the agreement, that no meeting of the minds took place, and that the agreement was not final because it was not reduced to writing. In support of her contentions, petitioner attached a letter she received from prior counsel, Howard LeVine. In the letter, dated April 27, 2015, LeVine stated, in relevant part, "so as to have no misunderstanding as to what the court recommended last week, the following is the court's recommendation," and "in the event you do not wish to accept this proposal which, of course, is your decision, we will not be able to proceed."

¶ 8 Following a hearing on respondent's motion to enforce, the court granted the motion and ordered the parties to prepare a judgment consistent with the terms agreed to on April 22, 2015. Subsequently, the parties appeared before the court for prove-up. Respondent presented a proposed judgment. Both parties proceeded to testify and both conceded they agreed to the terms as recited before the court on April 22, 2015. In relevant part, each party testified that they agreed to be bound by the following terms: (1) each party waived maintenance for each other; (2) respondent to retain his current residence, subject to a 60/40 division of equity, in petitioner's favor; (3) petitioner would retain her current residence, subject to a 60/40 division of equity, in petitioner's favor; (4) each party to retain their sole and separate property of accounts, personal

property, and vehicles held in their respective names; (5) petitioner to retain 100% of her pension from JCPenny, and all the proceeds from her pending law suit against JCPenney; (6) each party to retain any debts and liabilities incurred in their respective names; (7) each party to be responsible for 100% of their respective attorneys' fees.

¶ 9 Petitioner also testified that she did not enter the agreement freely and voluntarily because her prior counsel told her if she did not agree to the terms read aloud in court on April 22, 2015, "they weren't going to represent [her] anymore." She also testified that she was stressed at that time. The circuit court rejected petitioner's arguments and entered the judgment for dissolution of marriage. This appeal follows.

¶ 10 ANALYSIS

¶ 11 Petitioner argues that the trial court erred in enforcing the oral settlement agreement because there was "no meeting of the minds" as to the essential and material elements of the contract between the parties. Petitioner contends that there is no transcript of the proceedings that took place on April 22, 2015, and, based on the letter received from her previous attorney, she did not believe, at that time, that she was settling her case but was merely contemplating the court's recommendations.

¶ 12 The determination of whether a valid settlement occurred is in the discretion of the trial court and its decision will not be reversed "unless the court's conclusion is against the manifest weight of the evidence—that is, unless an opposite conclusion is clearly evident." *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 25 quoting *Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (1999). A settlement agreement is governed by the principles of contract law. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1090. A marital settlement agreement is a contract. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26. An oral agreement is binding if there

is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313 (2009). A "meeting of the minds" between the parties will occur where there has been assent to the same things in the same sense on all essential terms and conditions. *Haller*, 2012 IL App (5th) 110478, ¶ 26.

¶ 13 We first note that an *appellant*—petitioner here, has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (Emphasis added.). Any doubts which may arise from the incompleteness of the record will be resolved against appellant. *Id.* Here, petitioner's failure to provide a transcript or a bystander's report from April 22, 2015 proceedings entitles respondent to a presumption that the court's ruling that the parties had an enforceable oral contract was correct and entered in conformity with the law.

¶ 14 Furthermore, when parties reach a settlement agreement during a court-mandated settlement conference conducted in the judge's chambers and state the terms of that agreement in the judge's presence, there is no danger of enforcement of a contract which was, in fact, never made. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1097 (2003). This is so even if no transcript or written order memorializing the agreement is prepared on the date the agreement is reached. *Id.* The possibility of fraud is negated in that the trial judge can, as here, resolve any disputes as to whether an agreement was in fact reached or the content of that agreement. *Id.*

¶ 15 Here, notwithstanding the lack of a report of those proceedings, the circuit court recorded the material terms of the parties' agreement electronically in her notes. The court asked both parties whether they understood the terms proposed, and the parties assented to those terms,

under oath, in open court. The judge who was present during the pretrial conference was in a position to resolve any disputes as to whether an agreement was in fact reached and her presence was sufficient to ensure that the parties reached an oral settlement agreement. Moreover, in the light of a settlement being reached, the trial court entered an order striking the previously scheduled trial dates and set the matter for prove-up. At the hearing for prove-up both parties testified that on April 22, 2015, they agreed to the terms of the settlement agreement as recited before the court.

¶ 16 The existence of the letter sent to petitioner by petitioner's former attorney, after the parties consented to the agreement, and stating that the court merely announced recommendations that petitioner could still reject did not cast any doubt upon the court's finding that the parties reached a valid oral settlement agreement with respect to the material terms of their divorce. When the court was informed of the existence and the contents of the letter the court found it "self-serving." The court remarked "I was there ***? I took notes down, and I had them under oath. So she accepted it at that time. If she gave second thoughts to her lawyer and they discussed it, that doesn't mean that the oral agreement that she committed to at the time wasn't valid." Whether a contract exists, the terms of the contract, and the intent of the parties are questions of fact to be determined by the trier of fact. *In re Marriage of Gibson–Terry,* 325 Ill. App. 3d 317, 322 (2001). Here, the circuit court as the trier of fact observed the parties in open court, and both parties, under oath, consented to settle the case. The court's determination that the parties reached a valid settlement agreement is not against the manifest weight of the evidence.

¶ 17 Petitioner argues next that, because she refused to sign the subsequent written settlement agreement memorializing the terms of the parties' oral agreement, no such agreement existed.

Stated differently, petitioner claims that the execution of the written agreement was a condition precedent to an enforceable settlement. In support of her claim, petitioner cites *In Re Marriage of Chaltin*, 153 Ill. App. 3d 810 (1987). In *Chaltin*, the parties engaged in off-the-record settlement negotiations, and several months later, the husband filed a motion to enforce the parties alleged oral settlement agreement. *Chaltin*, 153 Ill. App. 3d at 813. Affirming the denial of the husband's motion to enforce, the court specifically relied upon several factors: the parties' failure to "set forth before the court" the terms of their agreement, and that the case continued to a contested trial on the merits. *Id.* at 814. Here, no such circumstances existed when the parties consented to the terms of the settlement agreement under oath, before the trial court, and the court struck the dates for the trial on the merits. Therefore, petitioner's reliance on *Chaltin* is misplaced.

¶ 18 Furthermore, where the parties assented to all the terms of the oral agreement, the mere reference to a future written document does not negate the existence of a present contract. *Haller*, 2012 IL App (5th) 110478, ¶ 30 (although the trial court directed counsel to draft a written judgment incorporating the terms of the agreement, the settlement agreement did not need to be reduced to writing to make it valid and binding; the purpose of the written judgment was simply to memorialize what had already been done and to finalize the case).

¶ 19 In the instant case, the parties entered into a comprehensive agreement while under oath and in open court. The court approved the agreement and directed counsel to draft a written judgment incorporating the terms of the agreement. The marital settlement agreement, which was subsequently drafted, simply memorialized the parties' previous enforceable oral agreement, but the settlement agreement did not need to be reduced in writing to make it valid and binding. The fact that petitioner changed her mind and refused to sign the written agreement had no effect on the valid and binding contract formed between the parties. A party's change of heart does not

affect the enforceability of a binding oral settlement agreement, as "a court should not set aside a property settlement agreement merely because one party has second thoughts." *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 32. To hold otherwise would dilute the binding effect of oral compromises and settlement agreements and permit parties to change their minds at their pleasure. *In re Marriage of Lorton*, 203 Ill. App. 3d 823, 826 (1990)

¶ 20 We also reject petitioner's argument that the written judgment contains additional terms not included in the oral agreement as petitioner fails to identify those terms and how they are material. See *First National Bank of Oak Lawn v. Minke*, 99 Ill. App. 3d 10, 14 (1981) (finding that a contract must be clear, definite and complete in all of its material provisions to be enforceable, but lack of nonessential details will not render the contract unenforceable).

¶ 21 Lastly, petitioner claims that she was under duress when she entered into the oral settlement agreement because her attorney at the time indicated that he would withdraw if she did not do so. Petitioner maintains that this situation caused her to be "stressed" and, therefore, she settled under duress sufficient to render the agreement unconscionable.

¶ 22 Coercion or duress includes the imposition, oppression, undue influence, or the taking of undue advantage of the stress of another, whereby that person is deprived of the exercise of her free will. *Flynn v. Flynn*, 232 Ill. App. 3d 394, 401 (1992). Further, stress is common in dissolution proceedings; stress alone is insufficient to establish duress or coercion. *Id.* The burden of proving duress, by clear and convincing evidence, is on the person asserting it. *Id.*

¶ 23 During prove-up, petitioner testified that she only agreed with the terms of the settlement agreement because the attorney who represented threatened to withdraw. But, based on the entire record, petitioner's argument that the attorney's threats had the effect of overriding her free will is far from convincing. The circuit court reiterated that it observed petitioner when she consented

to the terms of the settlement agreement before the court. The court had ample opportunity to observe both parties and noted that their consent was valid. Specifically the court stated: "She was under oath with me. I was very careful with her. She agreed. She was not under any pressure, and she agreed under oath to that oral settlement." As the court further noted, whether petitioner later had second thoughts and changed her mind did not affect the valid settlement agreement. See *In re Marriage of Kloster*, 127 Ill. App. 3d 583, 586 (1984).

¶ 24 In addition, petitioner failed to point to a single fact which suggests that the stress she experienced rose to a legally cognizable claims of duress. Nothing in the record suggests that petitioner was deprived of the exercise of her free will or that she had no alternative but to assent to the oral settlement agreement. See *Wallenius v. Sison*, 243 Ill. App. 3d 495, 503 (1993) (noting that an attorney's threat to withdraw if his client did not enter into a settlement agreement was insufficient to establish duress). On the totality of this record, we cannot say that there was any clear and convincing evidence of duress that the settlement agreement should be set aside on grounds that it is unconscionable. *In re Marriage of Riedy*, 130 Ill. App. 3d 311, 314 (1985). Accordingly, petitioner's claim of duress fails.

¶ 25 CONCLUSION

¶ 26 Based on the foregoing, we affirm the circuit court's order granting respondent's motion to enforce the settlement agreement and the court's judgment for dissolution of marriage.

¶ 27 Affirmed.