2019 IL App (1st) 181875-U

FOURTH DIVISION
May 23, 2019

No. 1-18-1875

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF FAZAL KHAN, Deceased	)	Appeal from the
	)	Circuit Court of
(ASAD KHAN,	)	Cook County
	)	
Executor/Respondent-Appellant,	)	
	)	
v.	)	No. 2012 P 104
	)	
RAZIA KHAN,	)	
	)	
	)	Honorable
Petitioner-Appellee).	)	Karen O'Malley,
	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County regarding the enforcement of an oral settlement agreement addressing the division of certain property rights.

¶ 2 Following the death of Fazal Khan (Fazal) in 2011, his wife Razia Khan (Razia) and his nephew Asad Khan (Asad) engaged in litigation in the circuit court of Cook County regarding their respective rights to property in West Virginia. Razia and Asad reached an oral settlement

agreement during a settlement conference with the circuit court judge in late 2015. When the parties subsequently disagreed regarding the division of revenue from easements, Razia filed a motion to compel enforcement of the settlement agreement, which the circuit court granted in August 2018. Asad contends on appeal that the circuit court erred in finding that a valid settlement agreement had been reached during the 2015 settlement conference. He alternatively argues that (a) the parties withdrew from the oral settlement agreement when they continued to negotiate its terms following the settlement conference, and (b) any division of easement revenue would be based on Asad's ownership of land, as described below. For the reasons discussed herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Fazal purchased approximately 102 acres of farmland in West Virginia in 1970. He and Razia married in 1972; they did not have children. Fazal subsequently acquired an additional three acres, bringing his total acreage to approximately 105 acres. In 2003, Asad purchased approximately 121 acres[1] adjacent to Fazal's land. According to Asad, Fazal did not provide any consideration toward the purchase of the 121 acres, but Asad placed Fazal's name on the property to assist in its management, as Fazal and Razia primarily resided in West Virginia at that time. Although Asad has referred to their "joint" ownership of the property, Razia has represented that Asad and Fazal were each undivided 50% owners as tenants in common.

¶ 5 After living in India between 2008 and 2010, Fazal and Razia returned to the United States and resided in Illinois. Fazal suffered multiple strokes and respiratory failure in September 2010, and he passed away on December 9, 2011. Razia filed a petition for letters of administration in the circuit court of Cook County on January 6, 2012, wherein she stated that

[1] Although the record is inconsistent regarding the exact acreages acquired by Fazal and Asad, we need not resolve the inconsistency. We will refer to the 105-acre property and the 121-acre property.

her husband died without a will. The circuit court appointed Razia as the independent administrator of Fazal's estate and entered an order declaring that she was his sole heir.

¶ 6 In March 2012, Razia filed a petition seeking a citation to recover assets from Asad. Razia represented that Fazal had relied on Asad to serve as his agent in administering the West Virginia real estate and to assist Fazal in the execution of oil and gas leases relating to the land. According to the petition, Asad took possession of a check from an oil and gas company payable to Fazal and Asad in the amount of $639,718 in early 2011, but only turned over a portion of that amount to Razia after demands from her and her brothers. Despite his agreement to turn over the remainder to Razia's counsel in January 2012, Asad refused to do so without various conditions. Asad filed a motion to dismiss the citation to recover assets, which was granted in part and denied in part.

¶ 7 Razia also filed a motion for a temporary restraining order (TRO) to enjoin Asad from transferring, and to compel him to return, any amounts he received with respect to the West Virginia property. In a supporting affidavit, she averred that not only was Asad "very secretive" regarding the gas leases, but also Asad's relatives were "meddling" in the properties she and Fazal owned in India. Asad responded that a TRO was improper because money damages provided adequate relief. The circuit court denied Razia's motion for a TRO.

¶ 8 Asad filed a claim against Fazal's estate in the amount of $390,000, which included: compensation for his services and expenses as Fazal's agent; amounts due for hay cut from Asad's land which was used to feed horses owned by Fazal; amounts Asad paid to caretakers who tended to Fazal's land; and a loan made by Asad to Fazal to cover his living expenses in India. In his affirmative defenses and counterclaims, Asad challenged Razia's representation that Fazal did not have a will, and he claimed that Razia had sold or given away all of the horses

kept on the West Virginia land, including horses Asad had purchased. Asad also represented that he had discovered that Razia intended to keep all of Fazal's land in West Virginia, including the land paid for solely by Asad.

¶ 9 Asad subsequently filed a petition to probate a will; appended to the petition was a will purportedly executed by Fazal in India on July 21, 2010. The will provided, in part, that Asad received all of the West Virginia land (the 105-acre property and the 121-acre property) and Razia received a townhouse in Hoffman Estates, Illinois. Other relatives received Fazal's personal property. In an order entered in January 2013, the circuit court terminated the letters of administration for Razia and appointed Asad as the supervised executor.

¶ 10 Razia challenged the validity of the will, asserting that Fazal would not have executed a will without informing her. She also noted that two witnesses to the will were the husband and son of one of the beneficiaries, and that Fazal had engaged in litigation in India against one or more of the beneficiaries. A handwriting expert retained by Razia opined that Fazal had not signed the will. In May 2013, Razia filed a supplemental proceeding to challenge the will and a motion to conditionally renounce the will.

¶ 11 After attempting to resolve their differences for the next couple of years, Razia and Asad participated in a settlement conference before circuit court Judge Karen O'Malley on December 30, 2015. An order entered on that day indicated there was a settlement. The parties do not dispute that they agreed, in part, that (a) Razia would receive the 105-acre property and Asad would receive the 121-acre property and (b) the revenue from mineral rights – *e.g.*, rights to oil and gas beneath the properties – would be divided 52.8% to Razia and 47.2% to Asad and administered through a limited liability company (LLC).

¶ 12 The parties' subsequent efforts to memorialize their oral settlement in writing were not

fully successful. While the parties were unable to finalize a written settlement agreement, they executed an LLC agreement in February 2017, which established ARK Limited Liability Company (ARK). The members of ARK were Razia and Asad, and their membership interests were 52.8 % (Razia) and 47.2% (Asad). The initial capital contributions to ARK were each member's respective mineral rights in the West Virginia land.

¶ 13 In April 2018, Razia filed a motion to compel enforcement of the settlement agreement.[2] According to the motion, Asad had recently entered into an easement agreement with a third party. The agreement was signed by Asad in his capacity as executor of Fazal's estate and individually, and granted easement rights with respect to the 105-acre and 121-acre parcels. Although Razia did not object to the agreement, she and Asad disagreed regarding the division of the proceeds therefrom. Razia's position was the settlement made in open court on December 30, 2015, covered all revenue received in connection with the ownership of the West Virginia land, whether from mineral rights, easement rights, or any other types of revenue arising out of the land ownership. She sought a finding that there was a valid oral settlement agreement and, pursuant to the agreement, that all revenues derived from the ownership of the West Virginia land were to be divided with Razia receiving 52.8% and Asad receiving 47.2%. In his response, Asad noted that the ARK LLC agreement was silent as to easements. He claimed that he was entitled to 100% of the proceeds from the easement generated by the use of the surface acres allocated to him pursuant to the December 30, 2015 oral agreement.

¶ 14 Asad was ordered to personally appear in court on August 1, 2018. During a hearing before Judge O'Malley on that date, Asad's counsel argued that easements run with the land and are not part of the mineral rights, which had been "deposited into the LLC account." Razia's

[2] This was Razia's second motion to compel enforcement of the settlement agreement; the parties resolved the issues raised in her first motion.

counsel responded, in part, that Razia would not have agreed to "split the easements in accordance with the land ownership" because she was "giving up land" as part of the settlement. The circuit court asked whether the easement income was being derived from "the minerals" or fracking,[3] and Razia's counsel answered affirmatively. Although Asad's counsel did not object to this characterization, he subsequently noted the easement was for a pipeline *through* the land which was possibly used for fracking but was not extracting minerals from the parties' land.

¶ 15 Judge O'Malley found that the parties' settlement was not limited to mineral rights, but was related to revenue derived from the land. Her recollection was that the 52.8%-47.2% split "related to all of the revenue being generated, whether it be by pipeline, by fracking, but essentially what was being done underground."

¶ 16 In an order entered on August 1, 2018, the circuit court found that a global settlement agreement was entered into on December 30, 2015. The circuit court granted Razia's motion to compel enforcement of the agreement, stating that "[a]ll mineral or energy related revenue derived from West Virginia real estate of the parties, including royalty, easement, or other related revenue" was to be divided with Asad receiving 47.2% and Razia receiving 52.8% through ARK. Asad subsequently filed the instant appeal.

¶ 17 ANALYSIS

¶ 18 Asad argues on appeal that the circuit court erred in finding that a valid oral settlement agreement had been reached during the settlement conference on December 30, 2015. In the alternative, he contends that circuit court erred in (a) failing to find that the parties had withdrawn from the oral settlement agreement when they continued to negotiate the agreement, and (b) finding that easement revenue should be divided in accordance with the 52.8 %-47.2%

[3] "Fracking is an oil and/or gas operation that uses vertical and horizontal wellbores together with large amounts of water, chemical additives, pressure, and explosive charges to reach and extract oil and gas from underground." *Smith v. Department of Natural Resources*, 2015 IL App (5th) 140583, ¶ 3.

mineral rights split, rather than the land ownership split.

¶ 19 We must first consider our jurisdiction over this matter. *E.g.*, *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶ 83 (noting that a reviewing court has a duty to ascertain its jurisdiction before proceeding in a cause of action and must dismiss the appeal if jurisdiction is lacking). Both parties note that the order entered on August 1, 2018, included language in accordance with Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Rule 304(a) provides, in pertinent part, that if multiple claims for relief or multiple parties are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the claims or parties only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *Id.*

¶ 20 Both parties also assert that jurisdiction is proper under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016), which provides that a "judgment or order entered in the administration of an estate *** which finally determines a right or status of a party" is appealable without the finding required for appeal under Rule 304(a). An order within the scope of Rule 304(b)(1), even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred. *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005); *In re Estate of Jackson*, 354 Ill. App. 3d 616, 619 (2004). "A central reason behind making the time for appeal of such orders mandatory, and not optional, is that certainty as to some issues is a necessity during the lengthy procedure of estate administration." *In re Estate of Kime*, 95 Ill. App. 3d 262, 268 (1981). Without the Rule 304(b)(1) exception, an appeal may be initiated after the estate was closed, which might require the reopening of the estate and marshalling of assets that have already been distributed. *Stephen*, 361 Ill. App. 3d at 1051.

¶ 21 In the instant case, we conclude that Rule 304(b)(1) is applicable because the challenged

order finally determined the validity of the oral settlement agreement and the parties' rights with respect to the easement revenue at issue. *E.g.*, *Cushing*, 2012 IL App (1st) 100768, ¶ 85. See also *Stephen*, 361 Ill. App. 3d at 1051 (noting that "[i]t is not necessary that the order resolve all matters in the estate, but it must resolve all matters on the particular issue"). The notice of appeal was timely filed within 30 days of the order. *Id*. As we have ascertained our jurisdiction, we now turn to the merits.

¶ 22 Asad's primary contention is that the circuit court erred in finding that a valid oral settlement agreement had been reached during the settlement conference on December 30, 2015. Citing *City of Chicago v. Ramirez*, 366 Ill. App. 3d 935 (2006), and *Kulchawik v. Durabla Manufacturing Co.*, 371 Ill. App. 3d 964 (2007), Asad argues that we review *de novo* a ruling on a motion to enforce a settlement agreement. In *Ramirez*, the appellate court found that the circuit court's decision to grant or deny the enforcement of a settlement agreement *without* holding an evidentiary hearing is reviewable *de novo*. *Ramirez*, 366 Ill. App. 3d at 946. Conversely, the appellate court in *Kulchawik* found that where the circuit court holds an evidentiary hearing, the deferential "manifest weight of the evidence" standard of review applies. *Kulchawik*, 371 Ill. App. 3d at 969. Because the circuit court did not hold an evidentiary hearing on Razia's motion to enforce the oral settlement agreement, Asad asserts that our review must be *de novo*.

¶ 23 We reject Asad's contentions regarding the standard of review. As an initial matter, we note that Asad did not request an evidentiary hearing and has thus forfeited any arguments based on the absence of such hearing. See, *e.g.*, *County Line Nurseries & Landscaping, Inc. v. Glencoe Park District*, 2015 IL App (1st) 143776, ¶ 46 (stating that because the party never asked the trial court to hold an evidentiary hearing on a fee petition or otherwise raise the point, any objection to the lack of an evidentiary hearing was forfeited). See also *Regency Savings Bank v. Chavis*,

333 Ill. App. 3d 865, 870 (2002) (noting that the "failure to present evidence or object to the trial court constitutes waiver"). In any event, neither *Ramirez* nor *Kulchawik* involved a purported settlement reached in the presence of the circuit court judge, as was the case herein. While we recognize the value of an evidentiary hearing if a trial court is called upon to determine what occurred outside of court – "so that the court could assess, based on testimony and other evidence, which party's version was more credible" (*County Line Nurseries,* 2015 IL App (1st) 143776, ¶ 31) – the same concerns do not exist when the judge was present for the settlement.

¶ 24 The instant case is akin to *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 312 (2009), wherein the parties reached a settlement in the presence of the judge. The *K4* court held that "[w]hen presented with a challenge to a trial court's determination that parties reached an oral settlement agreement, a reviewing court will not overturn that finding unless it is against the manifest weight of the evidence." *Id.* Although we acknowledge that another First District panel has opined that *Ramirez* and *K4* represent a "split in authority within this district" (*Vandenberg v. Brunswick Corp.*, 2017 IL App (1st) 170181, ¶ 28), we share Razia's view that these two cases can be reconciled, *i.e.*, the *de novo* standard (*Ramirez*) applies when the purported settlement occurs outside the court's presence and there is no evidentiary hearing, whereas the manifest weight standard (*K4*) applies when the court was present for the settlement agreement. "A finding regarding the validity of a settlement agreement is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or where a decision is palpably erroneous and wholly unwarranted." *K4*, 394 Ill. App. 3d at 312-13. Accord *Condon & Cook, L.L.C. v. Mavrakis*, 2016 IL App (1st) 151923, ¶ 58.

¶ 25 Asad asserts the parties did not reach a valid oral settlement agreement during the December 2015 settlement conference, *i.e.*, there was no meeting of the minds regarding the

material terms of the settlement. A settlement agreement is in the nature of a contract and is governed by contract law principles. *K4*, 394 Ill. App. 3d at 313. "Oral agreements are binding so long as there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement." *Id.* "A meeting of the minds exists whenever the parties' conduct objectively indicates an agreement to the terms of the settlement, even if one or more parties did not subjectively intend to be bound." *County Line Nurseries*, 2015 IL App (1st) 143776, ¶ 33.

¶ 26 The material terms of a contract must be definite and certain for the contract to be enforceable. *K4*, 394 Ill. App. 3d at 313. A contract is sufficiently definite and certain to be enforceable if the court is able from the terms and provisions thereof, under proper rules of construction and applicable equitable principles, to ascertain what the parties have agreed to. *Id.* "Open terms in a contract do not prevent the valid formation of a contract, so long as the mutual intent to enter the contract is clear." *Kirchhoff v. Rosen*, 227 Ill. App. 3d 870, 878 (1992). See also *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 28 (noting that it is not necessary that the contract provide for every possible future contingency or every collateral matter which might arise regarding the transaction); *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1091 (2003) (stating that the lack of nonessential details will not render a contract unenforceable).

¶ 27 In the instant case, Judge O'Malley was present during the settlement conference on December 30, 2015, wherein the parties negotiated a settlement agreement. An order entered on that date represented that a settlement had been reached. When the parties subsequently disagreed regarding their division of revenues from easements, Judge O'Malley reviewed her notes and her memory and concluded that (a) a global settlement agreement had been reached during the settlement conference, and (b) the settlement provided for the division of mineral or energy related revenue, including the easement revenue at issue, in accordance with the 52.8%

(Razia) – 47.2% (Asad) split. As discussed below, we find that the circuit court's conclusions were not against the manifest weight of the evidence.

¶ 28 We initially observe that the parties herein had opportunities to place the settlement discussions on the record, either by asking that a court reporter be present to record the discussions or by asking that the terms of the agreement be placed on the record. See *K4*, 394 Ill. App. 3d at 317. Both Asad and Razia assumed the risk, when neither asked that any part of the settlement agreement would be placed on the record, that the judge would recall the settlement agreement differently than they did. See *id.* "A party that has a chance to place any part of the discussion on the record will not be heard to complain that the judge's recollection is inaccurate, least of all in a case in which the party has nothing more than its own say-so to cast doubt on the accuracy of that recollection." (Internal quotation marks omitted.) *Id.*, citing *Gevas v. Gosh*, 566 F.3d 717, 719 (7th Cir. 2009), quoting *Lynch, Inc. v. SamataMason, Inc.*, 279 F.3d 487, 492 (7th Cir. 2002).

¶ 29 Asad essentially argues that there is more than his mere "say-so" and that we should not defer to the circuit court's recollection for a number of reasons. First, he contends that the record suggests that Judge O'Malley was not clear on the terms of the settlement. For example, Asad observes that the judge stated during the hearing on August 1, 2018, that the parties had agreed that "ownership of land in West Virginia was going to be 52.8 and 47.2." It appears that Judge O'Malley misspoke, as the *land ownership* was not so divided; Razia and Asad agree that each received separate parcels of land under their compromise. We are untroubled by the court's misstatement; we note that it was made at the beginning of the hearing on the motion and was immediately corrected by Asad's counsel. We are also unmoved by Asad's reference to certain vague comments made by the judge while she reviewed documents in the court file. Viewing the

transcript of the August 1, 2018 hearing in its entirety, Judge O'Malley does not appear to have been laboring under any misapprehension when considering and ruling upon Razia's motion. See *Jackson v. Naffah*, 241 Ill. App. 3d 1043, 1045 (1993) (noting that a reviewing court must "consider the alleged error in the context of the entire proceeding"). Furthermore, we do not view the circuit court's recommendation in an order entered on May 17, 2018, that the parties "reach a settlement" as evidence that the parties had never reached a settlement in the first place. As there were two pending motions to compel enforcement of the settlement agreement at that time, the circuit court appears to have simply urged the parties to resolve their differences, which the parties ultimately did with respect to the first motion.

¶ 30 Asad next contends that the substantial length of time between the settlement conference on December 30, 2015, and the hearing on the motion to enforce the settlement agreement on August 1, 2018, distinguishes the instant case from other Illinois cases wherein the court deferred to the trial court's recollection of a settlement reached in its presence. We note that Asad provides no support for this proposition. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (requiring the argument section of an appellate brief to include citation of the authorities relied upon). In any event, Judge O'Malley expressly relied not only upon her recollection but also her written notes when making her ruling. *E.g.*, *County Line Nurseries*, 2015 IL App (1st) 143776, ¶ 30 (observing that the judge possessed personal knowledge of the parties' settlement discussions and could draw on that knowledge to resolve the factual issue of whether they had agreed to settle). We are also cautious of Asad's arguments based on the gap between the December 2015 settlement conference and the August 2018 hearing, where his conduct – *e.g.*, his possible efforts to renegotiate the agreement – may have contributed to such a gap. See *Haller*, 2012 IL App (5th) 110478, ¶ 44 (noting that "[a] settlement agreement should not be disregarded simply

because one party has second thoughts").

¶ 31 Asad further contends that the terms of the executed ARK LLC agreement – as well as the unexecuted draft settlement agreements exchanged by the parties after the December 2015 settlement conference – suggest that the parties did not agree upon the material terms and thus there was no oral settlement. A written settlement agreement proposed by Asad provided that the parties would contribute their mineral rights to ARK, whereas Razia's written proposal provided for the contribution of their mineral rights *and* easement rights. Although the parties never executed a written settlement agreement, they signed the ARK LLC agreement, which did not expressly reference easement rights.

¶ 32 We note that it is unclear whether Asad is arguing that (a) there was no settlement or (b) there was a settlement, which was reflected in the LLC agreement. He contends, for example, that LLC agreement "should have been given substantial weight and consideration as it represents a written reflection of the parties' oral agreement." Under either scenario, however, we do not share Asad's perspective regarding the import of the ARK LLC agreement. The negotiation of both an LLC agreement and a separate settlement agreement suggests that the parties' settlement was broader in scope than the terms of their LLC agreement. In other words, if the LLC agreement encompassed their total compromise, as Asad arguably suggests, then a separate settlement agreement would be superfluous. Furthermore, the LLC agreement provided that the parties' *initial* capital contributions were their respective mineral rights; nothing therein mandated that the mineral rights were the *sole* contributions to the LLC.

¶ 33 We also observe that Razia's counsel explained during the August 1, 2018 hearing that the LLC agreement "talked about royalty rights only because you need division orders." A division order is a contract for the sale of gas or oil, specifying how the payments are to be

distributed; royalty owners enter into division orders to sell minerals and to direct how payments are to be made under a mineral lease. Black's Law Dictionary (10th ed. 2014). It is understandable that the parties executed the LLC agreement – memorializing certain undisputed portions of their settlement – where the parties already had contractual obligations to third parties with respect to the mineral rights. Conversely, given that the contract regarding the easement for the pipeline was not signed until after the execution of the LLC agreement, it does not appear unusual that easement rights would not be expressly referenced therein, particularly where the parties disputed the division of easement revenue.

¶ 34 In any event, the parties' inability to finalize a written settlement agreement does not negate the existence of an oral contract. Although Razia and Asad intended to memorialize their agreement, there is no indication that they intended that a written settlement was a condition to the binding effect of the oral settlement. See *Haller*, 2012 IL App (5th) 110478, ¶ 29. The settlement agreement "did not need to be reduced to writing to make it valid and binding." *Id.* ¶ 30. "The mere reference to a future written document does not negate the existence of a present contract where the parties have assented to all the terms of the oral agreement." *Id.* Accord *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 143 (1986).

¶ 35 In sum, the circuit court found that there was a global settlement agreement, and such agreement provided for a 52.8%-47.2% split of mineral or energy related revenue, including the easement revenue at issue. We will not overturn such determination unless it is against the manifest weight of the evidence. *K4*, 394 Ill. App. 3d at 312. After considering Asad's arguments, we cannot conclude that the circuit court's decision was palpably erroneous and wholly unwarranted or that the opposite conclusion is clearly apparent. *Id.* at 312-13. Because the circuit court's decision was not against the manifest weight of the evidence, we affirm.

¶ 36 Asad raises an alternative argument, *i.e.*, that the circuit court erred in failing to find that the parties had withdrawn from the December 2015 oral settlement agreement when they continued to negotiate the settlement agreement in the ensuing years. As a threshold matter, we note that Asad failed to raise this contention in the circuit court, and thus his argument is forfeited. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (stating that it is "well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal"); *Trapani Construction Co. v. Elliott Group, Inc.*, 2016 IL App (1st) 143734, ¶ 55 (noting that an unsuccessful party generally cannot raise a new theory of recovery for the first time on appeal). Even if we consider his argument, we do not find it persuasive.

¶ 37 Asad's sole support for the proposition that he and Razia withdrew from the settlement agreement is *Quinlan v. Stouffe*, 355 Ill. App. 3d 830 (2005). In *Quinlan*, the parties and their counsel met to settle a dispute regarding the costs of repairing a driveway. *Id.* at 833. The attorneys subsequently exchanged proposed settlement agreements reflecting their respective understandings of their agreement. *Id.* at 834. After the parties failed to agree on a written settlement agreement, the defendants filed a counterclaim for enforcement of an oral settlement agreement. *Id.* Following a bench trial, the circuit court stated that although an agreement may have been reached during the settlement meeting, "all parties attempt[ed] to modify that agreement and effectively withdrew from the agreement." (Internal quotation marks omitted.) *Id.* at 835. The appellate court affirmed, finding no "clear mistake." *Id.* at 840.

¶ 38 Asad's reliance on *Quinlan* is misplaced. While the *Quinlan* parties and their counsel convened for settlement negotiations, there is no indication that the trial judge was present. As discussed above, Judge O'Malley was present for the settlement conference, and an order entered on that date stated that a settlement was reached. See, *e.g.*, *K4*, 394 Ill. App. 3d at 315 (stating

that "the case before this court can be distinguished from *Quinlan* in one key respect: Judge Taylor was present during the settlement negotiations and found that the parties had reached a settlement at that time"). The *Quinlan* court also noted that the parties had not agreed upon two essential terms: the required level of future driveway repair and a mechanism for resolution of disputes. *Quinlan*, 355 Ill. App. 3d at 839. In the instant case, irrespective of the parties' subsequent exchange of draft settlement agreements, there is no clear indication that an essential term of the contract was missing from the agreement on December 30, 2015. During the hearing on Razia's motion to enforce the settlement agreement, Judge O'Malley specifically recalled that a *global* settlement agreement had been reached.

¶ 39 We agree with Razia that the parties neither cancelled nor abandoned their agreement. Illinois courts have found that contracts can be cancelled by the mutual consent of the parties to the contract. *Copley v. Pekin Insurance Co.*, 111 Ill. 2d 76, 86 (1986). Accord *Kirchhoff*, 227 Ill. App. 3d at 877. At a minimum, Razia has not consented to cancellation of the agreement. We further note that "[a]bandonment of a contract may be deduced from circumstances or from conduct which clearly evidences an abandonment thereof." *Bocchetta v. McCourt*, 115 Ill. App. 3d 297, 301 (1983). "The acts relied upon must be positive, unequivocal and inconsistent with the existence of the contract to constitute abandonment." *Id.* No "positive and unequivocal" acts evidencing abandonment occurred in this case.

¶ 40 Finally, Asad advances another alternative argument, *i.e.*, even if there was a valid oral settlement agreement and the parties did not withdraw from the agreement, the circuit court erred in its interpretation of the agreement. Citing *Duncan v. Cannon*, 204 Ill. App. 3d 160, 167 (1990), he argues that if a "contract is ambiguous, it was incumbent upon the trial court to look to the intent of the parties at the time they entered into the contract." Because the parties

unequivocally agreed that (a) Razia would receive the 105-acre property and Asad would receive the 121-acre property and (b) the mineral rights would be conveyed to ARK and the revenue therefrom would be divided 52.8% - 47.2%, Asad asserts that "[t]he plain meaning of Asad receiving a certain plot or acres of land is that he would receive all of the financial benefit from the land, absent the mineral rights which he agreed to convey."

¶ 41 We do not find Asad's contentions persuasive. As an initial matter, he does not clearly articulate why the settlement agreement was ambiguous. A provision of an agreement is not rendered ambiguous simply because the parties disagree regarding its meaning, and we will not strain to find an ambiguity where none exists. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010) (interpreting an insurance policy). As discussed above, the circuit court found that the parties had agreed that the mineral or energy related revenue, including the pipeline easement revenue at issue, was to be divided 52.8% - 47.2%. While Asad cites Illinois cases[4] regarding the nature of easements and the severability of mineral rights – and the circuit court expressly acknowledged that "easements run with the land" – we are unaware of any legal impediment to the parties' ability to divide the revenues from an easement in accordance with agreed-upon percentages.

¶ 42 CONCLUSION

¶ 43 For the reasons stated above, we affirm the judgment of the circuit court in its entirety.

¶ 44 Affirmed.

[4] We need not resolve whether Illinois or West Virginia law is applicable to this issue.