2013 IL App (2d) 121093-U
No. 2-12-1093
Order filed June 10, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF JAMES P. LeBLOCH, Alleged to be a Disabled Person	)	Appeal from the Circuit Court of Du Page County.
	)	No. 09-P-1071
(James G. LeBloch and Denise S. LeBloch, Petitioners-Appellants, v. Doreen Barrett, Respondent-Appellee).	)	Honorable Paul M. Fullerton, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's findings, (1) that it was authorized by the parties to resolve dispute over settlement terms, and (2) as to the terms that reflected the parties' intent, were not against the manifest weight of the evidence. Having approved a written release as authorized, the trial court did not err in ordering petitioners to sign it.

¶ 2 This case concerns the terms of a settlement intended to resolve various disputes between the children of James P. LeBloch, an older gentleman who is alleged to be disabled. The settlement was reached orally during a pretrial conference, and its terms were read into the record. However, a dispute later arose regarding the terms. The trial court ruled on the terms based upon its own knowledge of the parties' agreement, and this appeal followed. We affirm.

¶ 3 BACKGROUND

¶ 4 James P. LeBloch (James P.) and his wife had three children: James G. LeBloch (James G.), Denise LeBloch, and Doreen Barrett. Doreen is married to Michael Barrett. James P. and his wife created a living trust in 1993, naming themselves as trustees. James P.'s wife died in 2005. On December 31, 2006, James P. executed a power of attorney, giving James G. and Doreen the power to act jointly as his attorney for property. Under the terms of a joint action agreement executed in connection with the power of attorney, neither James G. nor Doreen could act unilaterally with respect to James P.'s property.

¶ 5 In 2009, James G. and Denise (petitioners) filed a petition for guardianship in which they sought to: have their father adjudged a disabled person; have James G. appointed as the sole guardian of James P.'s person and estate; and have the current power of attorney terminated. In the petition, they alleged that James P., who was then 96 years old, was "in extremely poor health" and had "declining mental abilities." They also alleged that Doreen and her husband Michael had, without James G.'s knowledge, participation, or consent, procured $13,000 gifts from James P. to each of his children and grandchildren. They alleged that Doreen, with the assistance and involvement of Michael, had breached her fiduciary duty by doing so, and sought a declaratory judgment that such unilateral transfers were prohibited by the terms of the joint action agreement.

¶ 6 The litigation continued for several years. During that time, Doreen and Michael (respondents) successfully moved to dismiss the complaint for failure to adequately state a claim. The petitioners were granted leave to file an amended complaint that, among other things, removed Michael as a respondent and defendant, leaving Doreen as the sole respondent and defendant. However, certain of the allegations in the amended petition still referred to Michael.

¶ 7 On April 2, 2012, the date set for the trial to begin, the parties asked the trial court for a pretrial conference to discuss settlement. All of the parties and their attorneys were present, including James P. (represented by an attorney), James G. and Denise (represented by two attorneys), and Doreen (represented by an attorney). In addition, Michael and Angel Traub, a guardian *ad litem* (GAL) for James P., were present.

¶ 8 The parties reached an agreement to settle the case. The trial court went back on the record to state:

> "All right. What I want to do, what I want for the Court to have on record—We've settled this case. I should say, through each party giving a little and having positive conversation, we have resolved this case.
>
> What I want to do is put on the record the general terms of this settlement. Because all parties have agreed that once today is concluded, there is a settlement. I know settlement documents need to be prepared. But in the event that there's an issue, parties may be before me to enforce a settlement.
>
> What I'm trying to say—and I hope I'm being articulate—is that the case is settled. I'm going to have Ms. Traub outline the details of the settlement in an outline form. And, again, if there's a problem at the end of the day, it's not going to be that we're going to litigate this case again. It's going to be over the terms of the settlement."

The GAL then read various terms, which included that the first amendment to James P.'s trust would remain, but the second amendment was voided; the power of attorney and joint action agreement were revoked; and the $13,000 checks would be considered as advancements against each recipient's share of the trust upon the death of James P. In addition, the public guardian would be appointed

as a limited guardian of the estate of James P., and Doreen and Denise would serve as guardians of the person for James P. Terms relating to the payment of monthly expenses for James P., attorney fees, expert witness fees, and the GAL fees were also read into the record. The GAL concluded by stating the final provision of the agreement:

> "And if there are any disputes over the Settlement Agreement as to these terms, it will be decided by the Court."

¶ 9 Following this recital of the terms, none of the parties voiced any objections or differing recollections. One of the attorneys for the petitioners added more specific terms regarding the administration of the trust, and that issue was discussed and a resolution was agreed upon. The trial court then polled the parties as to their consent to the agreement:

> "THE COURT: We went through it point by point and he [James P.] asked appropriate questions. And he understood what was happening. And he agreed to it with the overriding theme that he wanted this case resolved.
>
> I also had separate conferences with each of the individual parties. And we had lots of conversations. And what you're telling me now as you're standing here before me now, now that we've gone through these point by point, is that everyone is in agreement. So is that correct?
>
> MR. KNIPPEN [attorney]: Correct on behalf of Doreen Barry [*sic*], your Honor.
>
> MR. SCHROEDER [attorney]: On behalf of James P. LeBloch, your Honor, that is correct.
>
> THE COURT: Okay. Mr. Caruso, is that correct, from your clients' perspectives?

MR. CARUSO [attorney for James G. and Denise]: Yes.

***

[Briefly raising a point of clarification about the $13,000 gifts, and receiving confirmation from the court and an unidentified speaker.]

*** And beyond that, we agree. I agree. James G. and Denise LeBloch agree. For the record, Matthew Caruso."

The attorney for James P. then stated that he could have "the draft of this done for distribution among the attorneys tomorrow." The trial court stated, "Then I'll leave it to you," and arranged for the parties to come back to court a few days later.

¶ 10 On April 5, 2012, the parties appeared before the trial court to resolve a few issues that had cropped up. One such issue (the basis for the current appeal) was the petitioners' objection to releasing not only Doreen, but also her husband Michael and her children. In noting the existence of this issue, the attorneys for the petitioners and Doreen stated as follows:

MR. KNIPPEN [attorney for Doreen]: *** [W]e believe that mutual releases were part of our settlement, and we believe that those were to be comprehensive releases, basically releasing all things up to the point in time that this case is settled and released.

Mr. Caruso [the attorney for the petitioners] presented me today with a mutual release and settlement agreement. We added to that document [and the change was not acceptable].

***

I don't—I haven't had a chance to consult with him at this point as to the reasons why, to try to understand to determine [*sic*] whether some alternative language can be achieved.

> But, if not, based on the fact that the Court indicated that it would *** be in the position to enforce this settlement agreement, **if we can't reach agreement, I'm willing to submit my language and his language to your Honor for a decision.**
>
> MR. CARUSO: **I agree.**" (Emphasis added.)

The trial court asked whether it would be beneficial for the attorneys to speak together to resolve all of the various issues that had been raised, and the attorneys agreed. The trial court stated, "And the Court's input in this is when you get to the point where you can't resolve whatever the issue is, I made this clear on Monday that that's where the Court's going to chime in and resolve it." A few minutes later, it again stated that, "If there's something you can't agree to, and you're in the deadlock, that's when the Court comes in, okay?" None of the parties objected to either of these statements.

¶ 11 Following a recess, the parties reported to the trial court that they had reached agreement on all issues except for the language of the mutual release and one other issue. As to the mutual release, Doreen wished to add (1) the words "their spouses, children" to the list of persons released (which initially include the parties and their successors, assigns, employees, agents and attorneys), and (2) language extending the claims that were being released to include "without limitation, all causes of action against each other in any manner" arising out of any past act or failure to act. Doreen justified the first addition (of spouses and children) by noting that Michael had initially been a respondent and defendant in the current action, and had been separately sued for breach of contract (the joint action agreement). The petitioners responded that Michael and the children were not parties and should not be released.

¶ 12 The trial court then asked about the second proposed addition, noting that the handwritten notes indicated that Doreen initially had included "relating to the estate of James P. LeBloch" in the description of the claims released, but then that phrase had been lined out. Doreen's attorney explained that he had removed that clause because one of the earlier paragraphs in the release identified the relevant case number, and the rest of the proposed addition covered all claims (and thus was broad enough to cover claims related solely to the estate of James P.). Thus, the attorney believed that the additional language "relating to the estate of James P. LeBloch" was "simply duplicative" and "unnecessary."

¶ 13 The trial court then announced its decision:

> "Okay.
>
> Going back to what I talked about on Monday, you have an issue with respect to the settlement.
>
> This Court's going to make orders or will resolve any disputes, and today I'm resolving that dispute.
>
> I'm going to include the language ['] their spouses and children.[']
>
> [As to the second issue,] [w]e'll keep it ['] against each other *** in any other matter.[']"

On April 12, 2012, the trial court approved the final form of the written "Mutual Release and Settlement Agreement" (release) and entered an order requiring the petitioners to sign it by May 10, 2012.

¶ 14 On May 10, the petitioners filed a motion to reconsider, arguing that the trial court could not and should not order them to sign the release because the court had no personal or subject matter

jurisdiction over Michael and the children, and the petitioners had never agreed to release Michael and the children. On September 10, 2012, after the motion was fully briefed and argued, the trial court denied it. Eleven days later, Doreen filed a petition for a rule to show cause because the petitioners still had not signed the release. At the hearing on the petition, the trial court noted that it previously ordered the petitioners to sign the release (by May 10), and it was again ordering James G. (who was present in court) to sign the release, and that if he did not, he would be held in direct civil contempt and would be taken to jail. James G. ultimately signed the release on that day. He attempted to add the words "signed under duress and protest, all appeal rights preserved," but the trial court struck the language, saying that James G.'s position and non-waiver of rights was adequately protected by the statements already in the record. Denise signed the release on October 5, 2012, also objecting on the basis of duress and preserving her appeal rights on the record. This appeal followed.

¶ 15 ANALYSIS

¶ 16 Under Illinois law, settlement agreements are encouraged, especially where they will promote family harmony, and they should not be set aside absent a showing of fraud or mutual mistake. *In re Marriage of Lorton*, 203 Ill. App. 3d 823, 825 (1990); *Sheffield Poly-Glaz, Inc. v. Humboldt Glass Co.*, 42 Ill. App. 3d 865, 868 (1976). As the parties acknowledge, a settlement agreement is a contract, and principles of contract law apply to its interpretation and enforcement. *Lorton*, 203 Ill. App. 3d at 826. Oral settlements, like written settlements, are binding and enforceable, so long as offer, acceptance, and a meeting of the minds as to terms is shown. *Sheffield Poly-Glaz*, 42 Ill. App. 3d at 868-89. We will not disturb a trial court's findings regarding the existence and terms of a settlement agreement reached in its presence unless those findings are against the manifest weight

of the evidence—that is, "only if the opposite conclusion is clearly apparent" or where those findings are "palpably erroneous or wholly unwarranted." *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 3312-313 (2009); see also *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 146 (1997).

¶ 17 The petitioners first assert that the trial court should not have entertained the written release at all, because the execution of such a release was not a term or condition of the settlement agreement. This argument is contradicted by the record. Although the execution of such a written release was not among the terms expressly stated by the GAL on April 2, 2012, when she read the terms of the agreement into the record, the comments by the attorneys at the close of that court appearance—that one of them would prepare a draft written agreement for circulation among the attorneys for the parties—make it clear that the execution of a written version of the settlement agreement was contemplated and expected. Moreover, when the parties reconvened before the trial court a few days later to address certain disputes about the content of that written release, the petitioners never objected to the fact of a written release. Indeed, the petitioners themselves supplied a draft written release and argued that it should be adopted (rather than a draft with the additional language proposed by Doreen). "[A] party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). The parties cannot now be heard to complain that a written release was not part of the settlement agreement.

¶ 18 The petitioners point out that the execution of a written release was not strictly necessary: the oral agreement was enforceable even without a written version, and later claims against the parties arising out of the same issues would be barred by *res judicata* or claim preclusion. Further, the petitioners note that Michael has been dismissed from this action and they assert that the statute

of limitations has run as to any claims they might bring against him. However, there is no force to the argument that, simply because an action is not required, it may not be done. Here, the record shows that the parties wished to execute a written release, and agreed to do so. As the desired action was not contrary to law or public policy, the necessity for the action is irrelevant.

¶ 19 The petitioners next argue that the trial court improperly inserted terms (the release of spouses and children, and of claims beyond the present dispute) into the settlement agreement. We find that, although a court may not insert terms into an agreement (*Gallagher v. Lenart*, 367 Ill. App. 3d 293, 301 (2006)), that is not what the trial court did here. Rather, the trial court simply implemented one of the terms of the oral settlement agreement, which was that the trial court itself was authorized by the parties to resolve disputes regarding the intended scope of the settlement.

¶ 20 The record is clear that this power to resolve disputes was one of the terms of the oral settlement reached by the parties. The final term read into the record by the GAL on April 2, 2012, was that, "if there are any disputes over the Settlement Agreement as to these terms, it will be decided by the Court." Thereafter, all of the parties were polled as to whether the GAL's reading of the terms accurately reflected their understanding of the oral settlement agreement, and all of them including the petitioners agreed that it did. This understanding—that the parties had agreed to allow the court to resolve disputes over the terms of the settlement—was confirmed on April 5, 2012, when the parties met to bring disputed issues before the court. On that day, Doreen and the petitioners both stated (through their attorneys) that they were prepared to tender drafts of the language that each of them favored to the trial court and allow the trial court to decide between them. That is exactly what the trial court did. As with the previous argument, the petitioners consented to this procedure

and cannot now be heard to complain that it was improper, simply because they do not like the result. *Detention of Swope*, 213 Ill. 2d at 217.

¶ 21 The next argument raised by the petitioners is the crux of their appeal: the contention that the terms of the written release approved by the trial court are too broad and were improperly added. In making this argument, the petitioners face an uphill battle, due to the superior position of the trial court in this case, which observed the parties during the process of reaching a settlement, and our resulting deference to the trial court's factual findings as to the terms of the agreement. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

> "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. This is so even if no transcript or written order memorializing the agreement is prepared on the date the agreement is reached. 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." *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1097 (2003).

¶ 22 The first clause to which the petitioners object is the addition of the parties' spouses and children to the list of persons released via the written release. The petitioners argue that it was improper, or perhaps beyond the trial court's jurisdiction, for it to require the release of persons who were not parties to the present case. However, they have forfeited this contention by failing to cite any case law that would support it. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Mikolajczyk v. Ford Motor Co.,* 374 Ill. App. 3d 646, 677 (2007). Moreover, the law is contrary to this argument: "the fact the court did not have jurisdiction over all parties involved in the settlement agreement is of no

consequence in determining the validity of that agreement on the parties before the court." *Sheffield Ploy-Glaz*, 42 Ill. App. 3d at 871.

¶ 23 As to the second clause to which the petitioners object (the release of "all causes of action against each other"), we find that the meaning of this clause has been limited by the construction placed on it by the parties. In explaining why the parties removed the words "relating to the estate of James P. LeBloch" from the clause, the attorney for Doreen explained that those words were duplicative of the language already present in the release. The use of the word "duplicative" clearly conveys the parties' belief and intent that the release already limits the claims released to those that relate to the estate of James P. LeBloch. In light of this construction, we find that the trial court's inclusion of the second clause was not against the manifest weight of the evidence.

¶ 24 The final argument raised by the petitioners on appeal is that the trial court was wrong to "force" them to sign the release. However, inasmuch as: (1) the release was contemplated by the settlement agreement; (2) the parties agreed to submit disputes over the terms of the settlement to the trial court for resolution; and (3) the trial court's findings regarding those terms were not against the manifest weight of the evidence, the signing of the release was a formality which was within the trial court's power to order as part of enforcing the underlying settlement. As the trial court's actions were proper, the trial court was correct to advise the petitioners that noncompliance with its orders could result in a finding of contempt and corresponding sanctions.

¶ 25 The petitioners argue that the trial court's requirement that they execute the agreed-to release was an injunction that was entered without due process, but as this argument lacks support in the record and also lacks adequate citation to case law, we find no merit to it. For similar reasons, we

decline to address the petitioners' argument regarding the Joint Tortfeasors Contribution Act (740 ILCS 100/0.01 *et seq*. (West 2010)). See *Mikolajczyk,* 374 Ill. App. 3d at 677.

¶ 26 CONCLUSION

¶ 27 For the reasons stated, we affirm.

¶ 28 Affirmed.