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2013 IL App (3d) 120492-U

Order filed May 1, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

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| IN RE MARRIAGE OF |) | Appeal from the Circuit Court |
| AGNES JOSEPH, |) | of the 12th Judicial Circuit, |
| |) | Will County, Illinois, |
| Petitioner-Appellee, |) | |
| |) | Appeal No. 3-12-0492 |
| v. |) | Circuit No. 10-D-1385 |
| |) | |
| CHRISTIAN JOSEPH, |) | Honorable |
| |) | Robert P. Brumund, |
| Respondent-Appellant. |) | Judge, Presiding. |

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied husband's motion to vacate the parties' stipulated judgment of dissolution based on fraud, where the judgment expressly reserved resolution of encumbrances on the marital home, which husband claimed wife intentionally concealed from him.
- ¶ 2 A judgment of dissolution, which incorporated a marriage settlement agreement, was entered, dissolving the marriage of petitioner Agnes Joseph and respondent Christian Joseph and reserving issues concerning liens on the marital house. Christian thereafter sought to vacate the judgment of

dissolution, claiming Agnes fraudulently concealed existence of encumbrances against the marital house. We affirm.

¶ 3

FACTS

¶ 4 Petitioner Agnes Joseph and respondent Christian Joseph were married in 1984 and had a son in 2000. In July 2010, Agnes filed a petition for dissolution of the marriage and in July 2011, the parties agreed to a stipulated judgment for dissolution. The parties' settlement was orally proved-up on June 13, 2011. Before testimony began at the prove-up, the trial court admonished the parties that their agreement would be binding if accepted by the court. Each party testified regarding the terms of the settlement agreement, and that they understood it and agreed to it without duress or coercion. Agnes testified that there was no existing line of credit loan on the marital house and the original 1999 mortgage was the only encumbrance. She acknowledged there was controversy about the encumbrances on the marital home and that the issue would be addressed at a later date. Agnes stated that she provided a full and complete disclosure of her assets and liabilities. Christian agreed that Agnes made a complete discovery, although he noted that a savings account had been moved to different banks. He further testified that the agreement was not unconscionable.

¶ 5 On July 18, 2011, the cause was scheduled for entry of the stipulated judgment. Christian objected to entry of the stipulated judgment, arguing that entry should be delayed based on allegations of fraud in procuring the agreement. Christian stated he had received a telephone call from a collection agency that indicated there was an additional lien on the marital home in addition to the first mortgage and questioned Agnes' claims that only the original mortgage encumbered the marital home. The trial court denied Christian's oral motion, noting that the case was scheduled only for entry of judgment and that proper vehicle for his fraud allegations was a motion to vacate. The trial

court entered the stipulated judgement of dissolution. The judgment provided for maintenance and child support, and awarded Agnes and Christian joint custody of their son, with Agnes granted residential custody. A joint parenting agreement was incorporated into the judgment. The stipulated judgment distributed the parties' property and set forth provisions regarding the marital home as follows:

“Parties each shall have the right and authority to contact any mortgage lenders or former mortgage lenders to determine past or current mortgage obligations relating to said property. In the event there is more than one (1) mortgage on the property, the Court specifically reserves jurisdiction to address any dispute over the parties' respective liabilities for any additional mortgages, lines of credit, equity loans or other liens against the property whether incurred before or after the entry of this Judgment for Dissolution of Marriage.”

¶ 6 On August 17, 2011, Christian filed a petition to vacate the judgment of dissolution under section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2010)). Christian alleged that he agreed to the terms of the stipulated judgment based on Agnes's representations and testimony that the marital house was encumbered only with the original mortgage. In June 2011, he received a letter from a collections agency concerning an “Equity Maximizer” loan in the amount of \$152,478 taken out in September 2007; \$157,150 was charged off in April 2009. Other line of credit loans on the marital house included a 2003 loan for \$74,233 to Agnes as borrower and Christian as co-borrower, with a full payoff in March 2005, and a March 2006 loan for \$102,028 to Agnes as borrower and Christian as co-borrower, with a full payoff in September 2007. The petition also provided that the issue of “mortgages and liens against the equity in the marital residence

were reserved due to conflicting testimony regarding the existence of any additional lines of credit or mortgages.” Christian claims that he relied on Agnes’s false and fraudulent representations and that had he known of Agnes’s “false and fraudulent intentions,” he would not have agreed to the terms of the stipulated judgment. He anticipated that there was equity in the marital home to which he was entitled to half of the proceeds. Christian maintains that he would not have agreed to the other provisions in the settlement agreement, including unallocated support.

¶ 7 Agnes filed a motion to strike and dismiss Christian’s section 2-1401 petition, arguing that taking Christian’s allegations as true, the stipulated judgment expressly stated that the lien issue was reserved. In response to the motion to strike and dismiss, Christian argued that he ordered a policy of title insurance in August 2011 and the title search revealed two outstanding mortgages on the marital home, the original 1999 mortgage and a home equity loan in 2007. The trial court denied Agnes’s motion to strike and dismiss. Agnes filed her response to Christian’s section 2-1401 petition, asserting that Christian could not prove the elements of fraud. Agnes specifically challenged that Christian relied on her representations; that she believed the 2007 loan was forgiven after the charge-off; and that because the lien issue was reserved, Christian did not have any damages.

¶ 8 A hearing ensued on Christian’s motion to vacate. Agnes testified that she was unaware of the 2007 loan and that the signature on the loan document was not her signature. She also stated that it was an extension of the 2006 loan which was used with Christian’s knowledge to pay off credit card debts incurred during the marriage. At the time of the prove-up, she was only aware of the original mortgage. She thought the 2007 loan was closed and did not believe she owed any money on it. Christian testified that he learned about the 2007 loan in July 2011 after receiving a phone call from a collections agency attempting to collect on the debt. He received written correspondence after the

prove-up that there was an outstanding lien on the property. He did not sign the 2006 loan and was not aware of the 2003 loan or the alleged \$152,000 in credit card debt. He was aware of other debts that Agnes had incurred but failed to disclose on her financial affidavits. The “reserved” language was inserted in the stipulated judgment because he was suspicious about other encumbrances on the marital home. He agreed to the stipulated judgment on the basis that only the original mortgage encumbered the marital home.

¶ 9 The trial court issued a ruling on May 10, 2012, and denied Christian’s motion to vacate. The trial court found that Christian was aware of the 2007 loan; he did not file his section 2-1401 motion based on new facts or allege new evidence as required; and Christian’s signature appeared on all the loans. The trial court reasoned that it could not find fraud because both Christian and Agnes signed the loan documents and issues concerning outstanding loans, liens, mortgages or other encumbrances on the marital home were reserved. The trial court also found that Christian did not establish that he relied on Agnes’s misrepresentations regarding the 2007 debt, that her actions induced him to act, or that he was damaged by her representations. Christian appealed.

¶ 10 **ANALYSIS**

¶ 11 The issue on appeal is whether the trial court erred when it dismissed Christian’s motion to vacate the stipulated judgment of dissolution. Christian argues that he would not have entered into the stipulated judgment had he been aware of the additional lien on the marital home. He maintains that Agnes’s alleged misrepresentations constituted fraud and made the entire settlement agreement unfair and inequitable.

¶ 12 The Illinois Marriage and Dissolution of Marriage Act favors the amicable settlement of marital disputes and allows parties to a dissolution to enter into a settlement agreement that is binding

on the court unless found unconscionable. 750 ILCS 5/502(a), (b) (West 2010). Although favored, a settlement agreement will be vacated if it is the result of fraud or coercion. *In re Marriage of Palacios*, 275 Ill. App. 3d 561, 566 (1995). To prove fraud, the petitioner must establish by clear and convincing evidence that (1) the respondent made a false statement of material fact; (2) knowing it or believing it to be false; (3) made with the intent to induce the petitioner to act; (4) which the petitioner reasonably relied on; and (5) the petitioner suffered damages. *In re Marriage of Broday*, 256 Ill. App. 3d 699, 703 (1993). A party's concealment of information must be intended to deceive the other party to be actionable. *Broday*, 256 Ill. App. 3d at 703.

¶ 13 Christian brought his motion to vacate under section 2-1401 of the Civil Code, which applies to motions brought after 30 days and directed at a final judgment. 735 ILCS 5/2-1401 (West 2010). By our calculation, Christian filed his motion to vacate within 30 days of entry of the stipulated judgment. The trial court entered the stipulated judgment on July 18, 2011, and Christian filed his petition to vacate on August 17, 2011, the 30th day after entry. Accordingly, we will treat his section 2-1401 petition as a posttrial motion to vacate under section 2-1203 (735 ILCS 5/2-1203) (West 2010) of the Civil Code. *Geisler v. Everest National Insurance Co.*, 2012 IL App (1st) 103834, ¶ 50 (“To determine whether a motion is a proper posttrial motion, we must review the substance of the motion, and not just its title.”).

¶ 14 Section 2-1203 of the Civil Code applies to “motions after judgment in non-jury cases” and provides that a party may file a motion to vacate the judgment within 30 days after entry of the judgment. 735 ILCS 5/2-1203(a) (West 2010). We review the trial court's denial of a posttrial motion to vacate under section 2-1203 for an abuse of discretion and determine whether the trial court's denial results in substantial justice being done between the parties. *In re Marriage of Sutherland*, 251

Ill. App. 3d 411, 414 (1993).

¶ 15 We find that the trial court did not abuse its discretion when it denied Christian's motion to vacate. The trial court found that Christian's fraud allegations could not stand. The trial court rejected Christian's claim that he was induced into the settlement agreement by Agnes's representations that the only encumbrance on the marital house was the original mortgage. It determined Christian had signed all the loans, was aware of them when he agreed to the prove-up, and could not establish that he relied on Agnes representations, that they induced him to act or that he suffered damages as the encumbrance issues were expressly reserved. Its findings are supported by the evidence. Agnes testified she believed that because the 2007 loan had been "charged off" and she had not received any past due or foreclosure notices, the loan was forgiven and she and Christian were no longer obligated to pay it. She did not provide anything on the loan in discovery because there was nothing to give Christian due to the charge off. She considered the only encumbrance against the marital house to be the first mortgage. Christian stated the express reservation of the encumbrance issues was added to the settlement agreement because he was suspicious that there might be liens in addition to the first mortgage. He did not, however, seek additional information, either through his bank or the county recorder's office, although the settlement agreement expressly provided that he could investigate the lien status of the marital home. Moreover, the home equity loans were issued during the marriage to both Agnes and Christian and signed by both parties.

¶ 16 Based on the above facts, Christian cannot establish any of the elements of fraud. There is no evidence Agnes knowingly misrepresented material facts about the 2007 loan, her representations induced Christian to sign the settlement agreement, that he justifiably relied on her statements, or that he suffered any damages as a result of Agnes's representations because the issue has been reserved.

The trial court properly denied his motion to vacate the stipulated judgment of dissolution.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.