# ILLINOIS OFFICIAL REPORTS

## Appellate Court

***In re Marriage of Haller*, 2012 IL App (5th) 110478**

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| Appellate Court Caption | *In re* MARRIAGE OF SUZIE HALLER, Petitioner-Appellee, and ROBERT HALLER, Respondent-Appellant. |
| District & No. | Fifth District<br>Docket No. 5-11-0478 |
| Filed | November 26, 2012 |
| Held<br>(*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*) | The oral settlement agreement reached by the parties to dissolution proceedings just before their case was called for trial on all remaining issues was not subject to being cancelled by respondent's withdrawal of his assent prior to the entry of a written judgment, notwithstanding a change in his circumstances before the written judgment was entered, since the parties presented a stipulation to the court rather than proceed to a contested hearing, and they testified to their understanding of the agreement, its binding effect and finality, and their desire to have the agreement approved by the court. |
| Decision Under Review | Appeal from the Circuit Court of Madison County, No. 07-D-1071; the Hon. Dean E. Sweet, Judge, presiding. |
| Judgment | Affirmed. |

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| Counsel on Appeal | Curtis L. Blood, of Collinsville, for appellant.<br><br>Larry L. LeFevre, of LeFevre, Oldfield, Myers, Apke & Payne Law Group, Ltd., of Vandalia, for appellee. |
| Panel | JUSTICE STEWART delivered the judgment of the court, with opinion.<br>Presiding Justice Donovan concurred in the judgment and opinion.<br>Justice Goldenhersh specially concurred, with opinion. |

## OPINION

¶ 1 On October 19, 2007, Suzie Haller filed a petition for dissolution of marriage from Robert Haller. On March 17, 2011, the parties appeared for trial but reached a settlement agreement, which was read into the record. Both parties testified that it was their desire that the court approve the agreement and that they understood that the agreement was binding. The trial court approved the agreement, entered judgment in a docket entry, and ordered Suzie's attorney to prepare a written judgment to be filed on a later date. Subsequent to the hearing, but before a written judgment was entered, Robert filed a motion to set aside the settlement agreement. Suzie submitted a proposed written judgment and filed a motion for entry of judgment. Following a hearing, the trial court denied Robert's motion to set aside and granted Suzie's motion for entry of judgment. Robert filed a motion to reconsider, which was denied. He filed a timely notice of appeal. We affirm.

¶ 2 BACKGROUND

¶ 3 On October 19, 2007, Suzie Haller filed a petition for dissolution of marriage from Robert Haller, and on November 13, 2007, Robert filed a response. Between 2007 and 2011, the parties engaged in discovery and filed numerous motions, petitions, and responsive pleadings relating to the issues of maintenance and property rights.

¶ 4 The matter was set for trial on all issues on March 17, 2011. That morning the parties and their attorneys negotiated a settlement agreement that Suzie's attorney, Larry LeFevre, read into the record. At the start of the hearing, the trial court stated that if either party did not understand the terms of the settlement agreement, had any questions, or disagreed with it, that party needed to tell his or her attorney. The court stated that any issues would be clarified such that "at the end we will have on the record a full, final, complete and binding settlement." The court went on to state:

> "Now, it's going to be typed so that you will be able to read it later and you'll have it, but it isn't like you're going to be able to get it at home in a couple of weeks, look at it, and

have buyer's remorse or second-guess your decision, you know. You've made some concessions. You got some things you wanted; you gave up some things. People on the way home when they leave these hearings sometimes they remember the things they gave up and forgot [*sic*] the things they got and then they–so, it isn't like–so, you do need to understand today is the day. It isn't like when you get it you can make changes. So, the idea is as you hear this is–it's also known, if you don't understand something and you have questions, ask the questions. We want to make sure everybody understands it."

¶ 5 Pursuant to the agreement read into the record, Suzie was awarded the marital home at 56 Memorial, Highland, Illinois, and Robert was to pay the balance of the mortgage payments to the bank or to Suzie if she sold the home or paid the mortgage herself. Robert was ordered to pay Suzie $317,500. Suzie was awarded the Chrysler Sebring in her possession, any other property in her possession including bank accounts in her name, any life insurance insuring her life, and any retirement benefits to which she may be entitled. Suzie was ordered to pay any debts held in her name or incurred by her except as specifically ordered to be paid by Robert. Suzie was ordered to pay her own car insurance, the balance of her own medical insurance after a $250-per-month contribution by Robert, her own cell phone bill, and her own utilities.

¶ 6 Robert was awarded a house and 33 acres in Pocahontas, Illinois, and all interest in the property in Fulton County, Illinois, subject to any indebtedness on the properties. He was awarded his interest in Plant Maintenance Services (PMS), the Blazer vehicle in his possession, a 1947 Farmall Cub tractor, a golf cart, a bulldozer, $14,000 claimed as dissipation of assets, a 1988 Procraft fish and ski boat, and any other assets in his possession except those awarded to Suzie, including bank accounts in his name, life insurance insuring his life, and retirement benefits to which he may be entitled. Robert was ordered to pay $15,000 of Suzie's attorney fees and any other debts held in his name or incurred by him. Robert was ordered to pay $2,000 per month in maintenance for a period of four years. He was further ordered to pay a contribution of $250 per month toward Suzie's health insurance, which was to be converted to COBRA coverage for a period of three years or until Suzie qualified for insurance through employment or otherwise.

¶ 7 During the recitation of the agreement by Suzie's attorney, Robert's attorney, Gale Stipes, indicated that there was a problem and asked to speak off the record. When the attorneys came back on the record, the following took place:

"MR. LeFEVRE: Judge, I'm going to re-state the maintenance provision.

THE COURT: Okay.

MR. LeFEVRE: The maintenance provision is that Mr. Haller will pay Suzie Haller $2,000 a month for a period of four years beginning April 1, 2011. The maintenance is non-modifiable. We can't ask it to go up; he can't ask it to go down. It will terminate on statutory termination events. And it will also terminate at the end of four years.

THE COURT: But again, because I actually have this case in front of me right now, so by agreement are you saying it cannot be extended for any reason?

MS. STIPES: After four years, it's done. She can't ask that it be extended after four years. It's not modifiable during that four-year period. So, he's stuck with two; she's

stuck with two. At the end of four it's done.

THE COURT: Okay.

MS. STIPES: It's not reviewable. It's done in four years. But, it can be terminated upon statutory events–co-habitation–all the statutory events.

THE COURT: For termination.

MS. STIPES: If she remarries, it terminates on the statute; if she co-habits on a continuing conjugal basis. All the statutory factors.

THE COURT: So, you'll put those in the final documents.

MS. STIPES: Yes.

THE COURT: Okay. Okay. Otherwise, but as to increase of income, disability, somebody wins the lottery–

MS. STIPES: Two thousand dollars."

Robert's attorney then went on to specify that pursuant to the agreement, Robert was awarded all of his investments in Raymond James, Securitan, and American Capital, and any other accounts that he had, and that he was responsible for his own attorney fees.

¶ 8 After the terms of the agreement had been read into the record, both parties were sworn to testify, and Robert gave the following testimony:

"MS. STIPES: Now, Bob, we've been here all morning and we've worked out a settlement on this case. Is that your understanding?

MR. HALLER: Yes.

MS. STIPES: All right. And we've worked hard going back and forth. And do you feel comfortable with the settlement as Larry LeFevre and I have read it on the record?

MR. HALLER: Yes.

MS. STIPES: All right. And you understand that this is it today?

MR. HALLER: Yes, I do.

MS. STIPES: Do you feel like you've had an opportunity to do all the discovery that you wanted to do and you've had an opportunity to consult with me as much as you wanted?

MR. HALLER: Yes.

MS. STIPES: Do you feel like I have competently represented you in this case?

MR. HALLER: Yes.

MS. STIPES: And do you feel comfortable with the settlement as it's been read into the record?

MR. HALLER: Yes.

MS. STIPES: Now, do you understand the whole maintenance settlement that we've done?

MR. HALLER: Yes.

MS. STIPES: Do you understand that you're paying $2000 a month maintenance?

MR. HALLER: Yes.

MS. STIPES: You've agreed that you can't modify that for four years?

MR. HALLER: I agree.

MS. STIPES: So, if you get hit by a truck and you can't work and you're not making any money, you understand you still have to pay maintenance of 2000?

MR. HALLER: Sue the truck driver.

MS. STIPES: And so, you understand that in two years–after the four years you're done?

MR. HALLER: Right.

MS. STIPES: You don't have to pay maintenance after that. But, for four years you're stuck–

MR. HALLER: That's right.

MS. STIPES: –paying the maintenance? All right. And you understand that this is a final settlement?

MR. HALLER: Yes.

MS. STIPES: This can't be appealed?

MR. HALLER: Yes.

MS. STIPES: You can't come in later and say I changed my mind? The judge had talked to you about doing that, right?

MR. HALLER: Yes.

MS. STIPES: Do you feel that you're competent to make a decision today? You're not under the influence of anything that would make it so that you can't make a decision?

MR. HALLER: No, I'm not.

MS. STIPES: All right. And you're asking the Court today to approve this settlement and to end this case and to get on with your life?

MR. HALLER: Yes, I'm [*sic*]."

¶ 9 The trial court then asked both parties if they understood that instead of having a full trial they chose to present a settlement agreement. They responded in the affirmative. The trial court asked both parties if either one was under any threats, coercions, or influence to make this decision. They both responded that they were doing so freely and voluntarily. Both parties stated that they had no questions about the settlement. The trial court asked which attorney was going to prepare the written judgment that reflected the settlement agreement read into the record, and Suzie's attorney stated that he would. The trial court entered an order finding that, based upon the verified complaint and stipulated facts, there were grounds for the dissolution of the parties' marriage. In addition, the trial court made and initialed the following docket entry: "Case settled. Judgment entered. Set 5-11-11 @ 9:00 for entry of final documents."

¶ 10 On April 12, 2011, Robert filed a motion to set aside the settlement agreement and a motion to stay. He alleged that the settlement agreement should be set aside because he

learned he was not to receive a $53,939.92 bonus that both parties believed he would receive, that he learned that future bonuses that were expected would not be paid, that the income figures the parties relied on to reach their agreement were incorrect through no fault of his, that there was no meeting of the minds concerning the correct income figures, that due to the reduction in income he would not be able to meet the obligations of the oral settlement agreement, and that entering a judgment based upon the proposed settlement read into the record would result in extreme hardship and would result in future litigation due to his inability to meet the court-ordered obligations. On April 18, 2011, Suzie filed a motion for entry of judgment asking the court to enter a written judgment incorporating the agreement approved by the court on March 17, 2011. On June 16, 2011, Suzie also filed a petition for additional attorney fees incurred as a result of the motion for entry of judgment.

¶ 11 On June 21, 2011, the trial court conducted a hearing on the motion for entry of judgment and motion to set aside the settlement agreement. The court asked Robert whether it was a motion for a substantial change of circumstances subsequent to the entry of a judgment or a setting aside of the original judgment. Robert argued that there was never a judgment. The court stated that it disagreed because it entered judgment on March 17, 2011. Robert argued that he agreed to the settlement on the understanding that he was to receive $300,000 in bonuses from PMS and that subsequent to the March 17, 2011, hearing he learned that PMS was reducing his bonus to $24,000. He argued that there was no meeting of the minds because the settlement agreement was based upon bonuses that he was told he would be awarded, but that he will not receive. Suzie argued that all the relevant evidence was available and the financial documents came from Robert's employer, so if there was a mistake, it was unilateral on Robert's part.

¶ 12 Robert testified that he was the president of PMS until July 2010, at which time he was demoted to sales. He stated that on March 17, 2011, he believed that he was owed $300,000 in bonuses from PMS. He stated that he earned performance bonuses from 2005 through the second quarter of 2010. He said that approximately one week after the settlement agreement, PMS told him that it felt he did not do "a good job in the first half of 2010," so it chose not to pay him a bonus. Robert testified that shortly thereafter, PMS informed him that it was going to have an outside audit of his bonuses from the beginning of his presidency to the end of 2010. He testified that on March 17, 2011, he was not aware that PMS was going to conduct an audit or that it would not pay him his performance bonus. He stated that had he known he would not receive his performance bonus, he would not have agreed to the settlement because without the bonus he could not afford to pay Suzie what he owed her pursuant to the terms of the settlement agreement. Robert testified that he had planned to use his income to cover his expenses and the bonus to cover Suzie's expenses.

¶ 13 The audit, conducted by Mueller Prost PC, of bonus calculations and payments to Robert from 2005 through 2010 was admitted into evidence. The audit showed that the grand total of bonuses due from 2005 through 2010 was $1,439,180.40. It showed payments made in the form of Paychex payroll reports and advances not reported through payroll to be $1,414,876.62. The net amount due to Robert was listed as $24,303.78. The trial court questioned Robert:

"THE COURT: I am going to ask this question. I am looking here. It says grand total

bonuses due 2005 to 2010, $1,439,180, less payments made, and they list them in order, and they add together bonuses, advances not reported through payroll, bonuses per Paychex reports, advances, treating them exactly as the same. Explain to me how they are different. Because this report treats them identical, so I would like for you to explain to me how they are different.

A. Say it again, Sir.

THE COURT: They added your bonuses, your advances not reported through payroll, and they came up with this 1414. They treated them identically; explain to me how they are different.

THE WITNESS: The advances, well, the advances and the bonuses–

THE COURT: Either way, you got the cash, correct?

A. Yes, that is correct."

¶ 14 The 2005, 2006, and 2007 joint tax returns were admitted into evidence. They showed joint income for those years of $280,818, $591,848, and $382,780, respectively. In 2008, Robert began filing tax returns individually. His 2008 tax return was admitted into evidence and showed a total income of $99,015. The audit showed that year he received $265,000 in advances not reported through payroll. Robert's 2009 individual tax return was admitted into evidence and showed a total income of $74,583. The audit showed that Robert received advances not reported through payroll of $80,000. Robert's 2010 W-2 statement was admitted into evidence and showed income of $157,723.66. The audit showed 2010 advances not reported through payroll as $74,000.

¶ 15 Robert testified that the chief financial officer of PMS typed the following on the bottom of a document submitted in discovery: "In 2008 Bob started taking advances against the bonus to hide income due to divorce. The $377,000 above is advances that have not been reported as income on his W-2." Robert stated that once PMS became aware that the chief financial officer put her personal opinion on a document, she was fired. He said that he was not involved in her termination.

¶ 16 Suzie did not testify or call any witnesses. The court took the matter under advisement and ordered the parties to file briefs.

¶ 17 On July 5, 2011, Robert filed a brief arguing that the settlement agreement was based on a material mistake concerning the amount of money Robert would receive in the form of a bonus. Robert cited *In re Marriage of Lakin*, 278 Ill. App. 3d 135, 662 N.E.2d 617 (1996), for the proposition that a "property settlement between married persons, particularly when substantial assets are involved, cannot be concluded by the parties' oral consent when it is diligently challenged by one spouse before a decree has been entered."

¶ 18 On July 19, 2011, Suzie filed her brief. She argued that neither Robert's financial statement nor her amended financial affidavit shows that the parties understood that Robert had a $300,000 bonus that had not yet been received.

¶ 19 On July 21, 2011, the trial court denied Robert's motion to set aside and granted Suzie's motion for entry of judgment. The court found that the parties participated in extensive discovery over a long period of time, that on March 17, 2011, the parties entered into a full,

final, and complete settlement of all issues, effective that date, and that each party stated to the court that they understood and agreed with the terms and conditions of the settlement. The court found that Robert's objection to the proposed judgment was not based upon the position that the judgment inaccurately reflected the settlement as presented to the court, but on other grounds. The court found as follows:

> "Robert was a former President of and is now a co-owner of PMS, LLC. The document in question came from PMS. He now requests this Court to set aside an otherwise valid agreement based upon his 'misunderstanding' of a document which he provided to Suzie from his company. The Court finds that Robert's alleged 'misunderstanding' is not credible. The Court, considering the totality of factors, finds that there is no basis to set aside the agreement reached on March 17, 2011."

The trial court entered a judgment prepared by Suzie's attorney which incorporated the terms of the settlement that had been reached between Robert and Suzie in open court on March 17, 2011. The court further ordered Robert to pay Suzie $3,687.26 in attorney fees in addition to any amount awarded or agreed to by the parties pursuant to the judgment of dissolution.

¶ 20 On August 15, 2011, Robert filed a motion to reconsider alleging that the court erred in denying his motion to set aside the settlement agreement and in granting Suzie's motion for entry of judgment. Suzie filed a brief in opposition to the motion to reconsider and a brief in support of her motion for entry of judgment.

¶ 21 On September 21, 2011, the court heard the motion to reconsider. Robert asked the court to reconsider whether he had shown by clear and convincing evidence that there was a unilateral or mutual mistake of a material nature, and that the mistake was of such consequence that enforcement of the settlement agreement would be unconscionable. He argued that the mistake occurred notwithstanding the exercise of due care on his part.

¶ 22 On October 21, 2011, the court entered an order denying Robert's motion to reconsider and found that the judgment of dissolution of marriage was consistent with the settlement agreement and should remain in full force and effect. The court further found that Robert failed to prove by clear and convincing evidence that if a mistake was made in the preparation of the document, it was a material mistake that he relied upon in making his decision to enter into the settlement on March 17, 2011. It found that Robert had actual knowledge of the amounts received by him prior to the settlement. The court further found as follows:

> "Given the ongoing request for discovery in this cause, Robert's position with PMS, Robert's access to the financial records [of] PMS, Robert's actual knowledge of his receipt of the funds detailed in the Mueller Prost PC 'Audit,' the Court finds that Robert did not prove that he exercised due care prior to entering the Settlement Agreement on March 17, 2011. His testimony was that he disagreed with the fact of the notes or comments placed on the documents by Wilson, but proceeded to rely on the document, presented it to Suzie, and intended to submit it into evidence at the trial. His position is inconsistent at best, and clearly not the exercise of due care on Robert's part."

Robert filed a timely notice of appeal.

¶ 23 ANALYSIS

¶ 24 Suzie asserts that Robert's arguments are forfeited because he failed to raise them in the trial court. While we agree that Robert raises new issues in this appeal, we may still address them if we choose to do so. "The rule of forfeiture is a limitation on the parties, not the court. [Citation.] A reviewing court may override considerations of forfeiture in furtherance of its responsibility to maintain a sound and uniform body of precedent." *Smith v. Menold Construction, Inc.*, 348 Ill. App. 3d 1051, 1056-57, 811 N.E.2d 357, 362 (2004). We believe that a determination of the issues in this case will provide guidance to the circuit courts when faced with similar circumstances. Accordingly, even if Robert has forfeited his arguments, we choose to address the issues on their merits.

¶ 25 We first address Robert's argument that the oral agreement was incomplete and unenforceable because the conditions under which maintenance would terminate were not sufficiently detailed. He asserts that maintenance was an essential part of the agreement and that the circumstances under which it would terminate were only loosely discussed at the hearing. At the hearing, the attorneys for the parties stated that maintenance would terminate after four years or on the statutory termination events. Robert argues that the following discussion shows that the causes for termination were not spelled out at the hearing, but were to be delineated in the proposed judgment:

> "MS. STIPES: It's not reviewable. It's done in four years. But, it can be terminated upon statutory events–co-habitation–all the statutory events.
>
> THE COURT: For termination.
>
> MS. STIPES: If she remarries, it terminates on the statute; if she co-habits on a continuing conjugal basis. All the statutory factors.
>
> THE COURT: So, you'll put those in the final documents?
>
> MS. STIPES: Yes."

He asserts that in failing to list the statutory grounds for maintenance termination in the courtroom, the parties failed to address an essential term of the agreement and the purported oral agreement was so incomplete that it did not bind the parties. Robert asserts that because all of the statutory grounds for termination of maintenance were not stated at the hearing, he did not know that there were only three causes for termination until he read the proposed judgment.

¶ 26 A marital settlement agreement is a contract. *In re Marriage of Bohnsack*, 2012 IL App (2d) 110250, ¶ 9. "A settlement agreement is in the nature of a contract and is governed by principles of contract law." *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313, 914 N.E.2d 617, 624 (2009). Oral agreements are binding when there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *Id.* For the contract to be enforceable, the material terms must be definite and certain, meaning that the court is enabled from the terms and provisions, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do. *Id.* "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." *Pritchett v. Asbestos Claims Management Corp.*, 332 Ill. App. 3d 890, 896, 773 N.E.2d 1277, 1282 (2002).

¶ 27 In the instant case, maintenance is an essential term of the contract. The parties negotiated the terms for maintenance. During the hearing, Suzie's attorney stated that maintenance will "terminate only upon the death of Suzie Haller." Robert's attorney then said there was a problem and asked to go off the record. The record reflects that a discussion was held off the record. When the parties came back on the record Suzie's attorney said he was "going to re-state the maintenance provision." He then stated that Robert would pay Suzie maintenance of $2,000 per month for four years terminable on statutory events. Robert stated that he understood the terms of the agreement and that he assented to them. The trial court encouraged the parties to ask questions or raise objections if they had any. Robert did not question what was meant by maintenance terminating upon statutory events, nor did he raise an objection to maintenance terminating upon statutory events. Robert argues that there was no contract because there was no basis in the hearing transcript to address situations such as whether he would be in breach of the oral contract if he "refused to pay maintenance because Suzie committed a felony, or a crime against him."

¶ 28 "It is not necessary that the contract provide for every collateral matter or every possible future contingency which might arise in regard to the transaction. It is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do." *Morey v. Hoffman*, 12 Ill. 2d 125, 130-31, 145 N.E.2d 644, 647-48 (1957). The maintenance terms were definite and certain, and a court can ascertain what the parties agreed to do. "When any essential term of an agreement is left to future negotiation, there is no binding contract." *Hintz v. Lazarus*, 58 Ill. App. 3d 64, 67, 373 N.E.2d 1018, 1020 (1978). The conditions on which maintenance was to terminate were not left for future negotiation. They were set out at the hearing. Maintenance was to terminate after four years or on any of the statutory conditions for termination. While the written judgment was to list the statutory terms, it was not changing the essential terms.

¶ 29 We next address Robert's argument that the parties implicitly agreed at the hearing that the final written judgment, instead of the oral statement, was the agreement. 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, and this court will not reverse the trial court's judgment unless it is contrary to the manifest weight of the evidence. *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 322, 758 N.E.2d 459, 464 (2001). Robert argues that the conditions for the termination of maintenance were incomplete in the oral agreement and that when the parties agreed to specify the statutory events for termination in the written document, they made a new agreement that the oral proceedings were not binding. As discussed, the oral terms of the contract were not incomplete. After the terms of the settlement, including maintenance, were read into the record, Robert was sworn and his attorney asked him the following questions:

> "MS. STIPES: Now, Bob, we've been here all morning and we've worked out a settlement on this case. Is that your understanding?

MR. HALLER: Yes.

MS. STIPES: All right. And we've worked hard going back and forth. And do you feel comfortable with the settlement as Larry LeFevre and I have read it on the record?

MR. HALLER: Yes.

MS. STIPES: All right. And you understand that this is it today?

MR. HALLER: Yes I do.

* * *

MS. STIPES: *** And you understand that this is a final settlement?

MR. HALLER: Yes.

MS. STIPES: This can't be appealed?

MR. HALLER: Yes.

MS. STIPES: You can't come in later and say I changed my mind? The judge has talked to you about doing that, right?

MR. HALLER: Yes.

* * *

MS. STIPES: All right. And you're asking the Court today to approve this settlement and to end this case and to get on with your life?

MR. HALLER: Yes, I'm [*sic*]."

It is clear from the record that it was the intent of the parties that the oral agreement was to be final and complete on the day of the hearing. There is no evidence in the record that the parties intended that a signed written agreement was a condition precedent to the binding effect of the oral agreement.

¶ 30 When an agreement is clear, certain, and definite in its material provisions, it is by its very nature of being presented to the court enforceable. *In re Marriage of Lorton*, 203 Ill. App. 3d 823, 827, 561 N.E.2d 156, 159 (1990). In the instant case, the terms of the agreement were set forth orally before the court in great detail, and nothing further remained to be resolved. The trial court approved the agreement and made a docket entry that the case was settled and judgment was entered. The trial court directed counsel to draft a written judgment incorporating the terms of the agreement, but 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. 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. *Gibson-Terry*, 325 Ill. App. 3d at 323, 758 N.E.2d at 465. The trial court's decision that the oral settlement agreement was a binding contract is not contrary to the manifest weight of the evidence.

¶ 31 Robert also argues that he is entitled to avoid the oral settlement agreement because it was coerced. Robert asserts that from the outset of the hearing the trial court put pressure on the parties to agree. He classified the court's language as aggressive. He further argues that the settlement was hastily contrived. "The person asserting coercion bears the burden of proving it by clear and convincing evidence." *Gibson-Terry*, 325 Ill. App. 3d at 327, 758

N.E.2d at 468.

¶ 32 The cases cited by Robert in support of reversal are distinguishable from the instant action. In *James v. James*, 14 Ill. 2d 295, 152 N.E.2d 582 (1958), the supreme court set aside a settlement agreement on the ground of coercion. The court found that the settlement agreement was hastily executed and that during the negotiations and when the case was heard, the wife "manifested her dissatisfaction with the offer made to her." *Id.* at 306, 152 N.E.2d at 587. Additionally, the court found that she was overcome by her attorney's representations that she had to settle and could not leave because the matter had been set for hearing, by opposing counsel's repeated insistence that her husband had no assets that could be touched in a property settlement, and by the trial court's misrepresentations of the law. *Id.* at 306, 152 N.E.2d at 587-88. The court found that under the circumstances, "we cannot agree that [the wife] willingly and knowingly agreed to the property settlement or that her efforts to set it aside are prompted solely by a mere change of heart." *Id.* at 306, 152 N.E.2d at 588.

¶ 33 In *Crawford v. Crawford*, the court set aside a settlement agreement after determining that there was no evidence demonstrating that the wife was consulted or advised by her attorney regarding the terms of the settlement prior to testifying at the prove-up hearing. *Crawford v. Crawford*, 39 Ill. App. 3d 457, 462, 350 N.E.2d 103, 107 (1976). The wife testified that prior to taking the stand at the prove-up hearing, she informed her attorney that the alimony payments would be inadequate. *Id.* The court also took into consideration the fact that "once [the wife] departed from the stand at the prove-up hearing, she objected to her attorney concerning the terms of the oral agreement and thereafter immediately retained a new attorney who arduously endeavored to preclude the entry of a divorce decree based on the controverted settlement agreement." *Id.*

¶ 34 In the instant case, at the start of the hearing on March 17, 2011, the trial court told Robert and Suzie that the settlement would be read into the record and that at the end it would be a full, final, complete, and binding settlement. The trial court encouraged the parties to ask questions or make objections. Neither party expressed any objections or asked any questions. After the settlement was read into the record, Robert was asked, under oath, if he was comfortable with the settlement agreement, if he felt he had the opportunity to complete all the discovery he wanted, whether he had an opportunity to consult with his attorney as much as he felt was necessary, and whether he had been competently represented in the case. He answered affirmatively to each question. When asked if he understood that he could not change his mind at a later time, he responded that he understood. Robert was asked whether he was under the influence of drugs or medical treatment that would adversely impair his ability to make a decision. He stated that he was not. The trial court asked him if he understood the proceeding and advised him that he had a right to a full trial. He stated that he understood. The trial court asked if he was under any threats or coercions to enter into the settlement agreement. He responded that he was not and that he was entering the agreement freely and voluntarily. The record indicates that neither the court nor counsel subjected Robert to the extreme pressure to settle which is evidenced in *James* and *Crawford*. In both *James* and *Crawford*, the parties seeking to avoid the agreement expressed dissatisfaction with the settlement agreement at the hearing. Nothing in the record suggests that Robert was

dissatisfied with the settlement during negotiations or during the hearing. Robert agreed to the settlement and did not change his mind about its terms until some time after the hearing.

¶ 35 Robert argues that the haste in which the settlement agreement was reached coerced the agreement. In *In re Marriage of Steadman* the court found that the trial court did not abuse its discretion in denying the wife's petition to vacate a judgment of dissolution incorporating an oral settlement into the final judgment. *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 713, 670 N.E.2d 1146, 1153 (1996). The wife argued that two hours of negotiations formed the basis of the oral settlement agreement and that the hasty negotiations deprived her of the opportunity to make a meaningful choice. *Id.* at 705, 710, 670 N.E.2d at 1148, 1151. The court declined to mechanically apply an analysis based on the number of hours spent negotiating. *Id.* at 710, 670 N.E.2d at 1151. The court held that the negotiations did not deprive her of the opportunity to make a meaningful choice because "the significance lies not in the fact that the parties negotiated for two hours, but that they negotiated for two hours at arm's length with the aid of counsel." *Id.* The court found that while the wife may have been unhappy with the settlement terms, her unhappiness did not negate the fact that she stated under oath to counsel and the trial court that it was her agreement. *Id.* It further found that the trial court presented the wife with the opportunity to forego the provisions of the settlement and have a hearing, but she declined and stated that the terms testified to comprised her agreement. *Id.*

¶ 36 In the instant case, the parties negotiated at arm's length with the aid of counsel. The record contains numerous statements by Robert which demonstrate that the agreement was acceptable to him, that he wanted to proceed with the settlement, and that he knew he had the alternative of proceeding to trial. His statements affirming the agreement and his failure to object to the terms of the agreement when they were recited to the trial court at the hearing clearly evidence that he freely agreed to the settlement. Robert failed to prove by clear and convincing evidence that the oral agreement was coerced.

¶ 37 Finally, Robert argues that when one of the parties is dissatisfied with an oral agreement and challenges it before a written judgment has been entered, he is not bound by the agreement. This is the most troubling of Robert's arguments. He essentially asserts that Illinois law allows a party to withdraw his assent to an oral marital settlement agreement at any time before a written judgment is entered. He cites *In re Marriage of Perry*, 96 Ill. App. 3d 370, 421 N.E.2d 274 (1981), *Lakin*, *James*, and *Crawford* in support of this argument.

¶ 38 In *Perry*, the wife appealed from the trial court's denial of her motion to set aside an oral agreement prior to its incorporation into a supplemental judgment for dissolution of marriage. *Perry*, 96 Ill. App. 3d at 371, 421 N.E.2d at 275. The court found that the settlement agreement was the product of a 15-minute conference immediately before the prove-up hearing, that the wife did not participate in the meeting, that she expressed her dissatisfaction with the agreement prior to and immediately after the prove-up, that she had no knowledge of the extent of her husband's assets or income, and that she had no income at the time of the prove-up and had custody of the parties' six minor children. *Id.* at 375, 421 N.E.2d at 277. The court further found that the record reflected disparities in the evidence concerning the value of the marital property, the source of the funds used to purchase it, the mortgage balances on the various parcels, and the husband's net income. *Id.*, 421 N.E.2d at

277-78. Under these circumstances, the court vacated the oral settlement agreement and reversed and remanded for a full hearing. *Id.*, 421 N.E.2d at 278.

¶ 39 The instant case is distinguishable from *Perry*. In this case, Robert participated in the settlement conference. Additionally, he did not express his dissatisfaction with the agreement prior to or immediately following the recitation into the record of the settlement agreement despite the opportunities the trial court gave him. Unlike the wife in *Perry*, Robert was in the best position to know his financial situation. Respondent's exhibit 4, the audit, shows that from 2005 through 2010, Robert was entitled to $1,439,180.40 in bonuses. Respondent's exhibit 4 showed that bonuses paid per Paychex payroll reports and advances not reported through payroll totaled $1,414,876.62. Robert should have known the extent of his assets and income including bonuses. In the trial court, Robert asserted that the agreement was based upon a mistake of fact that he would be receiving performance bonuses from his employer which he discovered he would not receive after the hearing. However, the evidence suggested that Robert had already received most of the funds to which he claimed to be entitled as advances, which he had not reported as income. Robert did not raise this argument in this court.

¶ 40 In *Lakin*, the husband appealed the entry of a property settlement, arguing that the trial court abused its discretion when it entered a judgment order based upon an oral property agreement that contained provisions contested by both the husband and the wife. *Lakin*, 278 Ill. App. 3d at 138-39, 662 N.E.2d at 619. At the hearing to enter the judgment order, the husband's attorney objected to the entry of the order on the ground that the husband wanted language concerning his business interests suggested by his accountant to be included in the agreement. *Id.* at 138, 662 N.E.2d at 619. The wife expressed concerns about certain provisions, but took the position that the judgment should be entered so that she could begin receiving money owed to her and that any disputes concerning specific provisions could be addressed through posttrial proceedings. *Id.* The trial court determined that the judgment order comported with the agreement entered into the record orally at a previous hearing and entered the judgment order. *Id.* It stated that any clarification concerning one or more aspects of the judgment could be addressed at a later time. *Id.*

¶ 41 On appeal, this court held that a property settlement between married people, particularly when substantial financial assets are involved, cannot be concluded by the parties' oral consent when it is diligently challenged by one spouse before a judgment has been entered. *Id.* at 139, 662 N.E.2d at 620. This court went on to find that while, generally, oral property settlements are binding upon the parties, this oral agreement was not one that could be routinely reduced to a written judgment because the husband, before the entry of judgment, raised significant concerns about tax consequences that could impact the economic circumstances of both parties, the wife raised concerns regarding tax liability and the payment of credit card debts, and there was a significant likelihood of protracted postjudgment litigation over the disputed provisions. *Id.* at 139-40, 662 N.E.2d at 620. This court found it significant that both parties anticipated the need for further litigation to clarify and interpret disputed provisions should the order be entered and found that the trial court should seek a high degree of finality so that parties can plan their futures with certainty and are not encouraged to return repeatedly to the courts. *Id.* at 139, 662 N.E.2d at 620.

¶ 42 The instant case differs from *Lakin* most notably because neither party objected to the terms of the settlement agreement and there was no indication that there would be protracted litigation over the contract terms. In *Lakin*, this court acknowledged that oral property settlements are generally binding upon the parties, but found that both parties' objections to certain terms of the property agreement, prior to the entry of judgment, and the significant likelihood that there would be protracted litigation over the disputed provisions, to be critical to its determination that the oral property agreement was not binding. *Lakin*, 278 Ill. App. 3d at 139-40, 662 N.E.2d at 620.

¶ 43 The cases Robert cites do not stand for the proposition that an oral agreement may be set aside when one party disagrees with its terms and challenges it before a written judgment has been entered. To make such a holding "would dilute the binding effect of oral compromises and settlement agreements and permit parties thereto to change their minds at their pleasure." *Lorton*, 203 Ill. App. 3d at 826, 561 N.E.2d at 159. In each of the cases cited by Robert, one party disagreed with the terms of the oral agreement, but the agreement was set aside for reasons other than the party's mere discontent.

¶ 44 "It is well settled in Illinois that the law favors the amicable settlement of property rights in cases of marital dissolution." *Lorton*, 203 Ill. App. 3d at 825, 561 N.E.2d at 158. Section 502(a) of the Illinois Marriage and Dissolution of Marriage Act encourages parties to enter into written or oral agreements "containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children." 750 ILCS 5/502(a) (West 2010). "Only if procured by fraud or coercion or if contrary to any rule of law, public policy, or morals will such agreements be set aside." *Lorton*, 203 Ill. App. 3d at 825, 561 N.E.2d at 158. "[P]roperty settlements which have been assented to by the parties may not be cancelled solely upon the withdrawal of one party's assent prior to entry of the judgment. Agreements in settlement of pending litigation become effective when arrived at unless the parties have subjected their effectiveness to the occurrence of other contingencies." *In re Marriage of Maher*, 95 Ill. App. 3d 1039, 1042, 420 N.E.2d 1144, 1147 (1981). Even when parties contemplate the execution of a writing, the writing need not be a condition precedent to a valid settlement agreement; otherwise, courts would be foreclosed from ever recognizing or enforcing oral agreements to settle. *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 147, 685 N.E.2d 423, 425 (1997). "Where the contents of an agreement are testified to and the objecting party fails to object or to give evidence to the contrary, the agreement is established." *In re Marriage of Black*, 133 Ill. App. 3d 59, 63, 477 N.E.2d 1359, 1362 (1985). A settlement agreement should not be disregarded simply because one party has second thoughts. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251, 764 N.E.2d 1254, 1261 (2002).

¶ 45 In this case, 3½ years after a petition for dissolution was filed, the parties appeared for trial on all issues. After extensive negotiations, with the aid of counsel, they reached an oral settlement agreement. When the case was called, rather than proceed with a contested hearing, they presented a stipulation for the resolution of all issues. Both parties testified to their understanding of the agreement, its binding effect and finality, and their desire that it be approved by the court. After hearing the evidence presented, the court approved the agreement and entered judgment, with a written judgment memorializing the terms of the

agreement to be filed at a later date. At the conclusion of that hearing, the issues in this case had been fully resolved. As a result, the oral settlement agreement was established at the hearing, and it cannot be cancelled by the withdrawal of Robert's assent prior to the entry of the written judgment.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 48 Affirmed.

¶ 49 JUSTICE GOLDENHERSH, specially concurring.

¶ 50 I concur with the ultimate disposition of this appeal by my colleagues in the majority. The purpose of this special concurrence is to delineate the difference between the instant case and *In re Marriage of Lakin*, cited by the majority, which, in my opinion, needs further explanation.

¶ 51 The key distinction between the instant case and *Lakin* is that in *Lakin*, the trial judge refused to conduct a hearing on the merits of any objection to the proposed disposition that had been recited into the record on the prior court date. After being apprised of the substance of the problems inherent in the agreement between the parties, in major part tax consequences which the trial court was obligated to consider under the Illinois Marriage and Dissolution of Marriage Act, the trial court took the position that the parties had agreed to the settlement of their dissolution, the agreement had been read into the record, and they were bound to it. There was no attempt by the court to consider the merits of the problems and circumstances raised subsequent to the agreement, but rather an automatic rejection because an agreement had been previously made.

¶ 52 In the instant case, the circuit court, after being apprised of the objection to the proposed agreement, held a hearing on the merits and made findings of fact. Unlike in *Lakin*, the court in this case declined to enter an automatic rejection of Robert's position, but rather gave him his day in court, considered all of the circumstances presented to it, and made a ruling based on evidence rather than automatic preclusion of a party's opportunity to be heard. While I have some question about the trial court's finding, I cannot say that its conclusions were against the manifest weight of the evidence, and I in no way intend to substitute my judgment for that of the circuit court who had the opportunity to consider all of the evidence presented, as well as the parties' demeanor. I note rather that, unlike the judge in *Lakin*, the judge in the instant case gave the parties their day in court and determined the objections raised to the settlement agreement on the merits. This is the appropriate way to handle such objections.

¶ 53 With the explanation made above, I specially concur with my colleagues in the majority in the disposition of this case.