SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4922-14T4

LAURY J. BAKIE,

Plaintiff-Appellant,

v.

JOHN G. BAKIE,

Defendant-Respondent.

Submitted February 6, 2017 — Decided February 27, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-353-13.

Kochanski, Baron & Galfy, P.C., attorneys for appellant (Andrew M. Baron, on the briefs).

John G. Bakie, respondent pro se.

PER CURIAM

Plaintiff Laury Bakie appeals from the May 19, 2015 order enforcing a settlement agreement and entering a dual judgment of divorce (DJOD). After reviewing the facts in light of the arguments and applicable principles of law, we affirm.

The parties engaged in a protracted divorce proceeding, during which time plaintiff retained and discharged three attorneys, and defendant John Bakie retained and discharged his counsel. In April 2015, the parties appeared before Judge Bradford Bury for a settlement conference. At that time, they discussed what discovery remained outstanding, as well as a pending attorney lien issue defendant had with his prior counsel. The judge encouraged the parties to settle the issues between them, and requested defendant discuss a settlement of the outstanding legal fee with his former attorney.

Defendant did resolve the attorney lien with his prior counsel by agreeing to pay him from his share of funds held in escrow. A letter was sent to plaintiff requesting her consent to the release of these funds; however, she objected and requested a meeting with the judge.

On April 22, 2015, defendant and his prior counsel appeared in Judge Bury's courtroom and plaintiff participated via telephone. After an extensive discussion regarding numerous issues, defendant queried as to whether he could propose a global settlement. Plaintiff rejected the first offer made by defendant. She then proffered a counter-proposal and the following exchange took place with the court.

> Court: So . . . it's my understanding that out of the . . . approximate $130,000 escrow - -
>
> Plaintiff: Uh-huh.
>
> Court: - - 22,000 of which is going to [defendant's former counsel] - - okay? - - you're saying subtract the 22 from the 130 - -
>
> Plaintiff: Uh-huh.
>
> Court: - - and then the remainder, which is 108 - -
>
> Plaintiff: Uh-huh.
>
> Court: - - that you split that in half.
>
> Plaintiff: Correct.
>
> Court: And that would be 54,000 approximately, give or take a couple hundred dollars, because I don't know the exact amount, to each party.
>
> And then you dismiss the AOL litigation[1] - -
>
> Plaintiff: Uh-huh.

After some thought and discussion, defendant accepted plaintiff's proposal.

The judge advised the parties he was going to "walk through the particulars and . . . have each of the parties confirm for the record what the terms and the conditions of settlement are."

[1] Plaintiff had a separate civil lawsuit pending against defendant relating to a joint AOL account. There were no other parties to that suit.

Defendant agreed to retain his former attorney to prepare a written settlement agreement and the DJOD. Once both parties signed the agreement, Judge Bury stated the parties would return to court for a final judgment of divorce. He confirmed: "But I will say that as long as people are in agreement with regard to the terms and conditions of the settlement, it will be deemed settled today."

Defendant advised the judge that he "would be more comfortable taking the proofs today and having it settled today . . . ." Plaintiff agreed, saying, "Me, too. I wish there was some . . ." Defendant spoke over her stating, "I'm just afraid, you know, something will happen because we . . . ." At the same time, plaintiff said: "I don't want him to change his mind." Defendant responded: "I don't want to change."

The judge proceeded through the terms of the agreement, providing extensive details as to the equitable distribution and the division of the remaining monies in escrow. He further stated that the pending civil lawsuit by plaintiff against defendant would be dismissed with prejudice, "meaning as to Mr. Bakie." The judge explained: "You can't file a new lawsuit in the future. You can sue the pants off of AOL as you may have a right to do so."

Following his recitation, the judge asked each party if he had accurately set forth the terms and conditions of the settlement. Plaintiff responded: "Yes, you did, Your Honor, very

well. Thank you." She also stated she understood she was accepting the settlement and giving up her right to have a trial. Plaintiff testified it was her voluntary decision to enter into the agreement; she had not been coerced or pressured into accepting the settlement.

The judge found that "each of the parties have knowingly, intelligently and voluntarily, without coercion, duress, undue influence or otherwise, voluntarily entered into a settlement agreement today in open court on the record" and entered a DJOD incorporating the settlement agreement.

On April 30, 2015, plaintiff wrote to the court, advising that she did not understand that she was agreeing to pay half of defendant's counsel fees out of her share of the escrow and she no longer agreed to dismiss the civil lawsuit. In response, the court scheduled a hearing for May 19.

Both parties were represented by counsel at the May hearing. All parties and counsel had reviewed an audio tape of the April proceeding and the judge read a transcript from that hearing. Plaintiff agreed that the written settlement agreement comported with the terms placed on the record. She argued, however, that she did not understand that she would be contributing to the payment of defendant's counsel fees. Addressing the counsel fee issue, Judge Bury stated:

> [T]here are multiple recitals within the transcripts reflecting specific amounts as to which each of the parties would be receiving, that it was very clear that $22,000 was going to be paid to [defendant's prior counsel] and that $54,000 was going to be [paid to] each of the respective parties . . . .
>
> And there's no gray area with regard to how the $130,000 was going to be distributed. It stated on at least two occasions or more with regard to the amount that was going to be received by [plaintiff] and the amount that was going to be received by [defendant].
>
> . . . .
>
> [N]o one had any confusion with regard to the terms and conditions. Nobody said, I didn't understand, I'm confused or could you please explain that to me again, nothing along those lines.

The judge ordered that $22,000 remain in escrow pending the outcome of plaintiff's appeal. He permitted plaintiff three weeks to consult with an attorney to ascertain whether the agreed upon dismissal of defendant in the AOL litigation would have any detrimental effect on her ability to prosecute the claim against AOL. If there was no further correspondence with the court on this issue, plaintiff was to dismiss the complaint with prejudice.[2]

[2] Appellant has not provided any subsequent orders to us. She states in her brief that she is still in the process of securing an attorney specializing in internet law to bring her separate claim in Federal court against AOL.

On appeal, plaintiff argues that a dismissal with prejudice of defendant from her civil lawsuit "could do potential harm to her AOL claim," and that she was not aware "that the global settlement included her contributing $11,000.00 out of escrow to [defendant]."

In addressing the DJOD, we begin by restating well-established principles. Settlement agreements in matrimonial cases are contracts that should be enforced as long as they are fair and just. Petersen v. Petersen, 85 N.J. 638, 642 (1981); see also Lepis v. Lepis, 83 N.J. 139, 146 (1980) (recognizing that matrimonial settlement agreements are enforceable "to the extent that they are just and equitable." (quoting Schlemm v. Schlemm, 31 N.J. 557, 581-82 (1960))). Our courts recognize a "'strong public policy favoring stability of arrangements' in matrimonial matters." Quinn v. Quinn, 225 N.J. 34, 44 (2016) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). "[F]air and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Ibid. (quoting Smith v. Smith, 72 N.J. 350, 358 (1977)); see also Dolce v. Dolce, 383 N.J. Super. 11, 20 (App. Div. 2006) ("Settlement agreements . . . are entitled to considerable weight with respect to their validity and enforceability in equity, provided they are fair and just.") (internal citations omitted). As in other contexts involving

contracts, a court must enforce a matrimonial agreement as the parties intended, so long as it is not inequitable to do so. Quinn, supra, 225 N.J. at 45 (citing Pacifico v. Pacifico, 190 N.J. 258, 265-66 (2007)).

Although the judge properly made no findings as to the reasonableness of the contents of the oral agreement, he did find that the parties had entered into the agreement freely and voluntarily. He observed that the subsequent written agreement had "absolutely no discrepancy, no deviation from . . . the terms and conditions of the settlement" placed on the record on April 22. We see no reason to disturb that finding. See Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (finding that a settlement agreement is a contract and is to be enforced despite a change of heart or mind).

Judge Bury recited the proposed settlement in detail, pausing after each segment to inquire of plaintiff whether she understood and agreed to its terms. She responded affirmatively to every question. The settlement reached was a counter-proposal made by plaintiff; defendant had commenced the negotiations with a different split of the escrowed funds. We are satisfied that the judge patiently and thoroughly discussed the proposed terms of the settlement with both parties, and that his finding that the parties

"intelligently" and "knowingly" entered into the agreement is supported by the credible evidence.

Affirmed.